Annual report on the operation of the Criminal Quality Assurance Scheme

1 April 2023 to 31 March 2024

The Scottish Legal Aid Board

www.slab.org.uk

Introduction

1. This report sets out the statistics, issues and findings of the Criminal Quality Assurance scheme for the period 1 April 2023 to 31 March 2024.

2. The report also provides the statistics of the scheme compared to previous periods, and for Cycle 2 of the scheme, which started in 2019.

3. The main purposes of the Criminal Quality Assurance Scheme are to provide assurance as to the quality of service being provided by those delivering publicly funded criminal legal assistance and to drive continuous improvement in standards. This report provides evidence that the scheme is fulfilling both purposes. The high percentage of grant rates shows that most solicitors are doing a good job for their clients.

Outline of the Criminal Quality Assurance Scheme

4. The Criminal Quality Assurance scheme was devised in partnership with the Law Society of Scotland, alongside the development of the new solemn criminal payment regime which was introduced in 2010. The scheme is administered by SLAB under Part IVA of the Legal Aid (Scotland) Act 1986, and is part of the overall compliance regime.

5. All criminal solicitors who have registered with SLAB to provide criminal legal assistance are subject to peer review. The reviews are carried out over an initial six-year cycle. The process is overseen by SLAB's Criminal Quality Assurance Committee, which comprises three members appointed by SLAB, three members nominated by the Law Society of Scotland, and three independent or lay members appointed in consultation with the Society.

6. There are currently 20 Criminal peer reviewers who review the files for each solicitor against the criteria for each aid type. The peer reviewers make their recommendation on each file and the review overall. It is the Criminal Quality Assurance Committee who make the final decision on each review. Details of the current Committee members and peer reviewers can be found in Appendices 1 and 2.

7. The peer reviews consist of an examination of a range of solicitors' files by one or more of a panel of peer reviewers who are experienced and currently practising criminal solicitors, and were appointed after an open recruitment process. The purpose of the review is to examine the quality of the work carried out on behalf of the client, based on the evidence contained within the file. Files are assessed against set peer review criteria for summary, solemn and criminal appeal cases. The criteria cover issues like initial client contact, bail matters, handling of preliminary or guilty pleas, trial preparation, communication of outcomes, and legal aid matters. The criteria were developed in consultation with the Law Society, and with the reviewers themselves.

8. The routine review is comprised of a random mix of eight summary, solemn and appeals files from each solicitor which reflect the nature of the criminal business which the solicitor

carries out. These completed files are identified by selecting the nominated solicitor on the legal aid or ABWOR applications systems.

9. The standard applied in carrying out the reviews is that of the reasonable competence expected of a solicitor of ordinary skills, known as the *Hunter v Hanley* test, or the Inadequate Professional Service standard. The reviewer marks the review on a scale of 1 to 5 as below. A score of 3 or above is a pass.

    1. **Non-performance**
    2. **Inadequate professional service**
    3. **3- Marginal pass**
    4. **Pass**
    5. **3+ Good pass**
    6. **Very good**
    7. **Excellent**

10. After the review has been completed by the peer reviewer, we return the files as soon as possible, and put the results of the review before the Criminal Quality Assurance Committee for consideration.

11. Where the Committee agrees with the reviewer's recommendation to pass, we confirm this with the Compliance Partner in writing. We also provide the solicitor with details of any issues arising from the review and a copy of the peer reviewer's report.

12. Where the Committee agrees that a solicitor has failed a routine review, the solicitor will normally become the subject of an extended review, which will involve a review of a larger sample of files, taking place at the solicitor's premises by two peer reviewers, neither of whom was involved in the routine review. If this extended review also fails, a final review will be held after a further nine to twelve months, again at the solicitor's premises and involving a further two different peer reviewers.

Peer reviews conducted during the reporting period

13. During 2023/24, the number of completed peer reviews considered by the Criminal Quality Assurance Committee, and the decisions taken by the Committee are shown in full in the tables in Appendix 3.

14. The scheme is run over a six-year cycle to allow for all solicitors registered on the Criminal Legal Assistance Register to be reviewed in the cycle. The scheme started in 2012, and Cycle 1 ran to 2018. The scheme was paused then to allow us to consult on and introduce some changes to the scheme and criteria for Cycle 2 which started in April 2019. The scheme was suspended during the Covid pandemic from March 2020 to March 2022, although a number of Committee meetings took place during 2020 via Zoom to consider the reviews that had been created prior to lockdown. Cycle 2 is now expected to run to 2017.

15. During the year 1 April 2023 to 31 March 2024, the Criminal Quality Assurance Committee considered:

    - 70 initial routine reviews with 69 passed (98%).
    - 47 of these reviews were marked as Competent (67%).
    - A rating of 'Very Good' was achieved in 13 of these reviews (18%).

- 9 of the reviews were marginal passes (13%).
- Only 1 of the reviews failed.

Pass marginal reviews

16. Where a review is given a marginal pass the solicitor is reviewed again within 18-24 months. In cycle 2 where a further marginal pass is given, the Committee has the discretion to downgrade this to a fail if the second review suggests that the solicitor has not taken sufficient steps to address the shortcomings identified in the previous review. Out of the 24 marginal passes so far in this cycle, three solicitors were given a second marginal pass and therefore the review was recorded as a fail. An extended review was scheduled for all three. In the year 23/24, one deferred extended review has been carried out and this was recorded as a pass by both reviewers and the Committee.

Failed routine reviews

17. Of the five reviews which were failed during 2019-2024, two of the solicitors were sole practitioners, two were in a two-person firm, and one was in a larger firm.

18. Where a review fails, the Committee has the option to carry out a deferred extended review, usually after 6 to 9 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.

19. In none of the failed reviews so far in this cycle has either an immediate special or extended review been requested due to the issues identified in the initial reviews. In all the failed reviews, extended reviews were deferred for a period of at least six months.

20. During 2023/24, one deferred extended review was considered and passed by the Committee. This was considered to be a good pass by the Committee, indicating that the solicitor had paid close attention to the areas for improvement identified during the routine review and had taken positive action to address these.

Final reviews considered by the committee

21. In period 2023/2024 the committee considered two final reviews from cycle 1. Both were passed by the Committee.

22. One of these reviews had previously been referred by the Committee to the Board for possible de-registration after a failed final review. After considering further representations, the Board agreed that another final review should take place in a year's time, although this period was extended due to the pandemic. This second final review was carried out and passed by the Committee in 2023, with instructions that a further review be carried out in 12 to 18 months' time.

No file reviews

23. We have procedures to allow us to review solicitors on the Criminal Legal Aid Register (CLAR) who have no files either in their own name, or that they had worked on that could be used for

the purposes of peer review. Where there are between six and eight files available a normal routine review will take place. Less than this and the files and an assessment form require to be completed and then sent on to the peer reviewer for their comments and recommendation.

24. Where fewer than six files are identified, a no file or hybrid review will be created and the firm approached to make arrangements. In many cases, this contact results in inactive solicitors removing themselves from the Criminal Legal Assistance Register. In other cases, the firm may identify files on which the solicitor in question has worked enabling a routine review to be carried out.

Areas of good practice identified in the peer reviews

25. In the Peer Reviewers' reports, the following issues were highlighted by the reviewers as areas of good practice:

Communications

- Clear and concise letters sent to the client
- Obtaining detailed instructions from clients at the outset
- Good documented support for vulnerable clients
- Letters are tailored to each client

File Keeping

- Good quality notes of meetings taken and kept on file
- Clear evidence of file checks being undertaken
- Clear legible notes of meetings
- Well organised files for court

Legal work

- Managing client expectations well
- Clear consideration of disclosure
- Good preparations for trial
- Early identification of CCTV evidence apparent
- Strong communication with Crown to agree pleas where appropriate

Legal aid issues

- Online applications submitted well
- Sanction applications for Counsel or Expert Witnesses done well
- Copies of online applications kept in files

26. A selection of anonymised quotes from actual peer reviews which highlight the areas of good practice found are included at Appendix 4 of this report.

Areas identified in the reviews where improvement is needed

27. In the Peer Reviewers' reports, the following issues were highlighted by the reviewers as areas where improvement was needed:

Communications

- No letter confirming outcome of case sent to client
- Poor initial instructions taken
- Discussions on early pleas not noted.
- No record of meetings held with clients
- No terms of engagement letter or record to show this was sent

File Keeping

- Insufficient file recording
- Lack of instruction to agents on file
- Hard to read handwritten notes
- Gaps in files

Legal Work

- Experts not instructed timeously
- Failure to record perusal of disclosure
- Cases allowed to drift
- Possible abuses of court process

Legal Aid Issues

- Full fixed fees claimed in duty cases
- Declarations not signed and/or dated
- Copies of declarations not held in files
- Correct income not recorded in ABWOR matters

28. A selection of anonymised quotes from actual peer reviews which highlight the areas where improvements were needed is shown at Appendix 5.

Law Society of Scotland support scheme

29. The Law Society of Scotland has a scheme of support which can be given to sole practitioners and smaller firms to improve their practice following a failed routine review. This scheme is intended to provide assistance to solicitors who fail a review and who wish help with introducing improvements prior to the next stages of the Peer Review process.

30. Solicitors who obtained the “competent plus” scores in their own reviews are asked if they are willing to be considered for providing this assistance. The Law Society invites all solicitors with a competent plus marking to be part of the Support Scheme, which they run. A Memorandum of Understanding on the operation of this scheme has previously been agreed.

31. When we intimate a refused routine review, our refusal letters include details of the Support Scheme and how a solicitor can seek support under the scheme by contacting the relevant member of staff at the Law Society to use the service. When contacted by a solicitor who has failed his/her routine review, the Society refer the solicitor to a Support Scheme Solicitor on a confidential basis. The Society use a rota scheme to select the solicitor who can provide support, although if for professional or personal reasons the solicitor who has failed his/her review wishes to use another solicitor, this will be considered.

Assistance from SLAB

32. Solicitors who fail routine peer reviews also receive assistance from us. When a review is failed, the QA Co-ordinator sends the solicitor a package which contains a sample of Terms of Engagement letters, a tick list that they can start using for all their files plus a copy of some of the good comments we have had for some reviews. This is all part of the aim to help to improve the standards of service provided to clients as well as offering assistance with the peer review process.

Electronic peer reviews

33. SLAB uses a secure platform called Sharefile, this platform has been offered to solicitors who store their files electronically. From April 2023 – to March 2024, one review has been created using the electronic platform. Further feedback will be sought from the firms and reviewers using the system.

Appendix and/or further reading links

1. Full statistics on the peer review decisions taken by the Criminal Quality Assurance Committee
2. Anonymised quotes on areas of good practice found in the reviews
3. Anonymised quotes on areas where improvement needed found in the reviews

Appendix 1: Criminal Quality Assurance Committee

1. During 2023 and to March 2024, the following served on the Committee:

NAME	DESIGNATION
Colin Lancaster (Chair)	SLAB Chief Executive
Gerry Bann	SLAB Board Member
Nicky Brown	Head of PDSO
Peter Lockhart	Law Society Member (now reserve member)
Euan Gosney	Law Society Member
Nazim Hamid	Non Legal Member
David Crossan	Non Legal Member
Arlene Strachan	Non Legal member

2. There are currently two Law Society member vacancies on the Committee. The Law Society are currently in the process of filling these vacancies.

3. The Committee receives professional advice and support from Professor Alan Paterson OBE, Director of the Centre for Professional Legal Studies at the University of Strathclyde. Professor Paterson, who is one of Europe's leading experts on quality assurance systems in the legal profession, also provides training and oversees the work of the peer reviewers.

4. The work of the Committee is also supported by Lynsey Calder, SLAB's Criminal Quality Assurance Co-ordinator, who organises all the peer reviews and the Committee business.

Appendix 2: peer reviewers during the reporting period

1. During the course of 2023-2024 the peer reviewers conducting reviews were as follows:

NAME	FIRM	LOCATION
Tommy Allan	Allans	Shetland
David Bell	Paterson Bell	Kirkcaldy
Glen Davis	McLennan Adam Davis	Ayr
Terry Gallanagh	Paisley Defence	Paisley
Michael Gallen	Fleming & Reid	Glasgow
Gordon Ghee	Nellany & Co	Kilmarnock
Duncan Henderson	Inverness Legal Services	Inverness
Mark Hutchison	John Pryde & Co	Edinburgh
Gillian Law	Beaumont & Co	Edinburgh
Frazer McCready	McCready & Co	Stirling
Ian McLelland	J C Hughes & Co	Glasgow
James Mulgrew	Russells Gibson McCaffrey	Glasgow
Matthew Nicholson	CN Defence	Edinburgh
Paul Ralph	Paul Ralph	Fife
Judith Reid	Clyde Defence	Clydebank
Grazia Robertson	L & G Robertson & Co	Glasgow
Alastair Ross	Dalling & Co	Stirling
Sandra Walker	Hughes Walker	Edinburgh
Gail Wiggins	Grant Smith Law Practice	Turriff
Ross Yuill	Glasgow Law Practice	Glasgow

Appendix 3: statistics on peer reviews conducted during the reporting period

Cycle 2

- **Year 1 - April 2019 – March 2020** (Peer reviews were suspended in March 2020 due to covid and restarted in April 2022) A number of Committee meetings took place during the rest of 2020 via zoom to consider the reviews that had been created prior to lockdown.
- No meetings took place in 2021 and the statistics therefore cover **April 2019 – March 2021**
- **Year 2 – April 2022 – March 2023**
- **Year 3 – April 2023 – March 2024**

- There is also details of how many reviews have been considered across both cycles of reviews

	1 April 2023 to 31 March 2024 (12 months)	**1 April 2022 to 31 March 2023 (12 Months)**	**1 April 2019 to 31 March 2021 (24 months)**	**Cumulative total to 31 March 2024 (Cycle 2)**	**Total Decisions taken by the Committee cycles1 & 2 to 31 March 2024**
Number of Routine Reviews with decisions taken by the Committee	70	58	106	234 (for the new cycle 2 routine reviews only)	1330

Breakdown of committee decisions

	1 April 2023 to 31 March 2024 (12 months)	**1 April 2022 to 31 March 2023**	**1 April 2019 to 31 March 2021 (24 months)**	**Cumulative total to 31 March 2024 (Cycle 2)**	**Total Decisions taken by the Committee cycles1 & 2 to 31 March 2024**
Routine Reviews passed by the Committee	69 (98%)	58 (100%)	101 (95%)	228 (97%)	1243 (93%)

Decisions taken by the Committee	1 April 2023 to 31 March 2024 (12 months)	1 April 2022 to 31 March 2023 (12 Months)	1 April 2019 to 31 March 2021 (24 months)	Cumulative total to 31 March 2024 (Cycle 2)	Total Decisions taken by the Committee cycles1 & 2 to 31 March 2024
• Reviews - Excellent	0	0	0	0	1
• Reviews – Very Good	13	10	20	43	185
• Reviews – Pass competent	47	45	68	160	938
• Reviews – marginal pass	9	2	13	24	119
• Reviews – cont.	0	0	1	1	N/A

	1 April 2023 to 31 March 2024	1 April 2022 to 31 March 2023 (12 months)	1 April 2019 to 31 March 2021 (24 months)	Cumulative total to 31 March 2024 (Cycle 2)	Total Decisions taken by the Committee cycles1 & 2 to 31 March 2021
Routine Reviews failed by the Committee	1	0	4	5	87
• Deferred extended review	1	0	4	5	73 (there are still 5 outstanding Deferred reviews to take place)
• Immediate extended review	0	0	0	0	6
• Immediate special review	0	0	0	0	3

Extended and special reviews considered by the committee

There was 1 deferred extended review that was considered by the Committee in the reporting period April 2023 to March 2024. This was consider to be a good pass by the Committee.

	1 April 2023-March 2024	1 April 2022 to 31 March 2023 (12 months)	1 April 2019 to 31 March 2021 (24 months)	Total Decisions taken by the Committee to 31 March 2024
Extended Reviews considered by the Committee (Deferred and Immediate)	1	1	8	64
• Pass	1	0	6	50
• Fail	0	1	2	9
Special Reviews considered by the Committee	0	0	0	3
• Pass	0	0	0	2
• Fail	0	0	0	1

Final reviews considered by the committee

	1 April 2023-31 March 2024	1 April 2022 to 31 March 2023 (12 months)	1 April 2019 to 31 March 2021 (24 months)	Total Decisions taken by the Committee to 31 March 2024
Final Reviews considered by the Committee	2	2	1	7
• Pass	2	2	0	6
• Fail	0	0	1	1

No file reviews

No file and part file reviews considered by the Committee	1 April 2023-31 March 2024	1 April 2022-31 March 2023	1 April 2019 to 31 March 2021 (24 months	Cumulative 1 April 2019 – 31 March 2024	Comments
Reviews where solicitors had no criminal files to assess.					***Following a PASS decision*** *- 1 solicitor has been re reviewed in year 2023/2024 the*
• **Created**	**46**	**28**	**11**	85	
• Passed	5	7	2	14	
• Failed	2	2	1	5	
• Postponed due to Covid	0	14	3	17	

No file and part file reviews considered by the Committee	1 April 2023-31 March 2024	1 April 2022-31 March 2023	1 April 2019 to 31 March 2021 (24 months	Cumulative 1 April 2019 – 31 March 2024	Comments
• Came off CLAR after initial contact • Under review • Moved to routine review or part file review	30 1 11	2 2 1	5 0 0	37 NA 12	*review was again passed* ***Following a failed no file review*** *In year 2023-2024 3 solicitors were due to be reviewed again. 2 came off CLAR after contact and 1 solicitor had chosen to remove from CLAR prior to re review taking place*
Reviews where solicitors had fewer than 6 files available to review • **Created** • Passed • Failed • Delayed due to Covid • Non-compliance from firm • Off CLAR • Still to be considered by CQAC	8 3 0 0 0 4 1	**6** 2 0 0 0 1 3	**5** 3 0 1 1 0 0	**19** 8 0 1 1 5 4	*All that were passed by the CQAC will be reviewed again in 3 years' time.* *3 solicitors were due to be re reviewed in year 2023/2024. All 3 had come off CLAR*

Appendix 4: areas of good practice identified in the peer reviews

The following are some specific quotes from the actual reviews which passed, highlighting these areas of good practice found:

These files were a joy to review, typed notes made the files easy to follow. Solicitor has shown good communication skills with the client, the crown and the court. They are providing a good service to clients.
There were a number of positives from the files. The files were all easy to follow but their letters to the clients are excellent. They are full of detail and cover all information a client would need. The language is clear and easy to follow for the clients.
As can be seen from the individual marks I found it hard to find any fault with any of the files. They present as extremely organised with clear file management systems in place and consistent, detailed file recording. This is despite the range of work that files represented. There were very good examples of work including attempts to roll up cases, advising clients of all diets and patience with clients. The files have the presentation of an extremely experienced practitioner who is not only skilled in court but who pays attention to detail. They were amongst the highest quality of files that I have reviewed.
All of the files were in good order and easy to follow. Entries were mainly typewritten and where handwritten were able to be read and understood. Disclosure was generally timeously requested, obtained and perused. Results obtained were normally very favourable. There were copies of the online Mandates and the accounts submitted on all files. The solicitor is clearly confident and experienced in his craft.
There is no fault to be found with this file at all. On the contrary the client has received focussed, responsive advice and the solicitor has given the file significant attention reflecting the client's medical difficulties.
Care and sensitivity was evident in dealings with clients who had mental health issues.

Appendix 5: areas identified in the reviews where improvement is needed

The following are some specific quotes from the actual reviews, highlighting the areas where improvement was needed:

Better file notes detailing defence and instructions would result in higher marks as would recording advises tendered and s196. Not all files clear that TOE sent.
The move between firms undoubtedly is a factor but the files affected lacked a great deal of information and made assessment more difficult. There was no indication of perusals and whilst some inferences could be drawn it would be better if some note was made. The Mandates were generally not signed by the clients albeit some explanation was available/could be inferred. Communication with the clients wasn't always obvious albeit there was no issue with clients failing to attend through lack of contact etc (and again this may have been affected by the move between firms.
The solicitors Terms and Conditions of Business letter should be updated to include the telephone number and email address of the SLCC. Some of the files had occasional missing entries or letters.
The theme of this review is the lack of file entries. This meant one file could not be assessed and others were very difficult to assess. There was one file for example where the client had e mailed to indicate self-defence but there is no note of this being followed up. There are very few file entries on these files regarding meetings with the clients. It can be presumed the meetings took place given the action on the file but it would be very difficult for another solicitor to pick these files up and start to work on them.