

THE SCOTTISH LEGAL AID BOARD
QUALITY ASSURANCE PEER REVIEW SCHEME
FOR CRIMINAL LEGAL ASSISTANCE – OUTLINE - NOVEMBER 2008

IMPLEMENTATION

The Quality Assurance Scheme (“Peer Review”) for criminal legal assistance is governed by Part IVA of the Legal Aid (Scotland) Act 1986 (“the Act”).

It is part of the existing compliance regime, administered by the Scottish Legal Aid Board (“the Board”) in terms of which every solicitor and firm of solicitors wishing to provide criminal legal assistance must register with the Board. To be entered and retained on the register, solicitors and the firms with which they are connected must comply with the requirements of the Code of Practice (“the Code”) approved by Scottish Ministers. The Code sets out, amongst other matters, the standards of professional conduct, services provided and systems of management and administration required by the Board in relation to the provision of criminal legal assistance.

Section 25C of the Act obliges the Board to monitor compliance with the Code. The Board’s compliance auditors will therefore continue to assess and register applications from solicitors and firms for entry on to the register. They will monitor continued compliance with all aspects of the Code not covered by peer review, reporting their findings, as at present, to the Board. The Code under Section 25B of the Act will require amendment and a consultation exercise will be needed prior to approval by Scottish Ministers. The peer review scheme will be administered through a review committee akin to that in the civil scheme but instead of that committee reporting to the Law Society it will report to the Board.

OUTLINE OF THE SCHEME

Criminal Quality Assurance Committee

The membership of the Criminal Quality Assurance Committee will be similar to that under the civil scheme and has been agreed by the Board and the Society in consultation with the Scottish Government. It will comprise of nine members, three drawn from the Board, three from the Society and three lay members. Its terms of reference will mirror those of the Board’s Committees. It will be convened by a legally qualified Board member and in keeping with its civil counterpart more than 50% of its membership will be legally qualified.

Peer Reviewers

The Board in consultation with the Society will select for interview Peer Reviewers drawn from practising solicitors with extensive experience in criminal law and criminal legal assistance. Interviews will be conducted by representatives drawn from each organisation with input from a lay member of the review committee. Reviewers will be part time, contracted by the Board and at rates and on terms and conditions to be determined in consultation with the Society and with the approval of the Scottish Government. Reviewers may, if appropriate, be drawn from those contracted under the civil scheme.

Operation

As in the civil scheme, the Board's compliance auditors will, wherever possible, conduct their compliance audits before the Peer Reviews thereby enabling the compliance audits to inform the peer review process. Again, wherever possible, civil and criminal compliance audits will be conducted at the same time to keep disruption of the day to day business of the firms to a minimum.

As in the civil scheme, all firms will be reviewed within a three year cycle to match that of the current compliance audits as follows:

Routine Review

The Board's compliance department will supply the QA committee with details of firms which can be reviewed (it is the QA committee which determines those to be reviewed) along with details of randomly selected files, five for each practitioner providing Criminal 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 QA committee, a Board employee, will allocate reviewers to carry out the review.

Reviewers will be 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; if a firm has any concern about the suitability of any particular reviewer reviewing that firm or any individual file or files it can make representations to the review committee 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. It is proposed that 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).

While routine reviews will normally be undertaken out with 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 court procedure), the firm should inform the Administrator immediately and, if the explanation is acceptable, a substitute file will be selected in its place, although the review committee may also have the file which is not available reviewed at a later date. Files selected should include the associated legal aid or advice and assistance file.

It is proposed that files will be reviewed in accordance with guidance, criteria and a marking scheme to be published by the Board in consultation with the Law Society. Three sets of draft peer review criteria have been developed with the Law Society covering:

- Summary criminal cases;
- Solemn criminal cases
- Criminal appeals cases

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 review committee 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

It is also proposed that, following the Civil Scheme, there should be provision for an 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 Board's expense and will involve at least two reviewers. The reviewers at an extended review can review any Criminal Legal Assistance 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 review committee 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

Similarly, following the Civil Scheme, it is proposed that there should be a final review which 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 - thereby allowing the firm/solicitor time to remedy issues identified.

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. Although they can review any Criminal 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 Criminal Quality Assurance committee, which if it decides the firm has passed, will inform the Board's Compliance Department and the firm in writing. If consideration is being given to failing the firm or a solicitor within the firm, the firm or solicitor will be informed in writing and may make written representations. Thereafter, the QA committee will report to the next meeting of the Board, the Board's Legal Services Committee or Audit Committee (whichever arises first) in accordance with the Board's existing de-registration procedure.

In the event of a de registration following failure after a final review a solicitor or 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 it is proposed, following the Civil Scheme, that the QA committee may instruct a special review be carried out at any time. These will be undertaken at the Board'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 or a solicitor 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.