



# Criminal legal assistance update

3 February 2012

## Commencement of the Criminal Quality Assurance Peer Reviews

Some time ago, the Scottish Government made clear their intention for the Board to introduce a quality assurance scheme for criminal legal assistance, similar to the peer review scheme introduced for civil legal assistance in 2004.

Therefore, a criminal scheme was devised in partnership with the Law Society of Scotland, along side the development of the new solemn criminal payment regime which was introduced in 2010. The scheme is administered by the Board under the Part IVa of the Legal Aid (Scotland) Act 1986, and is part of the overall compliance regime.

We held a series of information seminars on the introduction of the scheme in 2010, which were attended by around 290 solicitors from 165 firms throughout the country. A comprehensive update with details of the main issues raised at these seminars was issued on 16 August 2010, and is still available on our website, in the Mailshots section.

The scheme is now due to commence and reviews will start in Mid February. Full details on how the scheme will operate can be found in Part 1, section 3 of the Board's Criminal Legal Assistance Handbook. This contains a link to our guidelines on the scheme which also includes the peer review criteria which have been set for summary solemn and criminal appeal cases. Further details can also be obtained from Kingsley Thomas, Manager of Criminal Legal Assistance ([thomaski@slab.org.uk](mailto:thomaski@slab.org.uk) or 0131 240 2085) or

Edith Cook, Criminal QA Co-ordinator ([cooked@slab.org.uk](mailto:cooked@slab.org.uk) or 0131 240 2000).

All criminal solicitors who have registered with the Board to provide criminal legal assistance will be subject to peer review. The reviews will be carried out over a six year cycle. This is overseen by the Board's Criminal Quality Assurance Committee (CQAC), which comprises three members appointed by the Board, three members appointed by the Law Society of Scotland, and three independent or lay members appointed in consultation with the Society.

The peer reviews will not be carried out by the members of the CQAC. The members' role is to appoint and consider reports from peer reviewers, who are experienced and currently practising criminal solicitors. These peer reviews will consist of an examination of a range of solicitors' files by one or more of a panel of 21 peer reviewers who have been appointed after an open recruitment process from the profession.

The peer reviewers and the legal members of the Quality Assurance Committee have now all gone through and passed reviews themselves, and we are now ready to commence the reviews of all criminal solicitors. The first letters will be sent out in February, with details of the files which need to be sent to a peer reviewer. All files will relate to completed cases with accounts recently rendered.

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 will be 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.

Each registered solicitor will be reviewed at least once during the six year cycle. The timetable for these reviews is determined by factors such as legal aid volumes and the size of firms. Once reviewed, we will not normally review the solicitor again within the six year cycle, unless there is a specific reason for this.

The routine review will be comprised of a random mix of ten summary, solemn and appeals files which reflect the nature of the criminal business which the solicitor carries out. These files will be identified by selecting the nominated solicitor on the legal aid or ABWOR applications systems. Where solicitors doing criminal work are not normally noted as nominated solicitors on the legal aid applications, we will use other methods such as time sheets or duty claims.

The scheme was officially announced on 11 June 2010. This means that only work carried out after that date will count towards the reviews. The reviewer will still look at any work done before that date, but while the work can count towards a pass, it will not count towards any decision to fail a file.

We will write to the solicitor, through the Compliance Partner of the firm providing a list of the files selected for the review and the allocated peer reviewer. We will also arrange for the files to be collected from your premises and delivered to the reviewer.

Peer reviewers will not be reviewing solicitors in their own local area. Reviewers are obliged to disclose any reason (such as an involvement in a current case) why they should not carry out a review of any particular criminal solicitor or file held by the firm. If a solicitor being

reviewed has any concerns about the suitability of the reviewer selected, they can make representations to us within a week of the date when the files are due to be delivered to the reviewer. If this is accepted, the files will be allocated to another reviewer.

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.

After the review, we will return the files as soon as possible, and put the results of the review before the Criminal Quality Assurance Committee for consideration. Where the Committee agrees with the reviewer's recommendation to pass, we will confirm this with the Compliance Partner in writing and note the decision on the firm's compliance records. We will also draw any issues arising from the review to the solicitor.

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 files taking place at the solicitor's premises. If this extended review also fails, a final review will be held after a further six months at the solicitor's premises. In the period before this review, we will make support and guidance available to the solicitor to help address the issues already raised in the previous reviews.

Compliance audits will continue as before. However, although these are separate reviews, they are related. The compliance audits do not consider standards of representation, and are not conducted by peer reviewers. The quality assurance scheme is being administered by our Criminal Applications Department, although there will be close liaison with our Audit and Compliance Department.

The Criminal Quality Assurance Committee is very keen to provide regular feedback to solicitors about the general findings from the reviews. We will be sending out regular updates highlighting, in general terms, the issues and areas of good practice identified in the peer reviews.