



Criminal Quality Assurance Scheme Update

16 August 2010

Criminal quality assurance - questions and answers

Peer reviews of criminal legal assistance files will be starting soon. These questions and answers address some issues raised at the ten recent seminars held throughout the country, and attended by 288 solicitors, representing 165 firms. For more information about the scheme and how it works, please read Part I of the Criminal Legal Assistance Handbook on our website.

The Criminal Quality Assurance Committee aims to communicate regularly and effectively with solicitors on the implementation of the quality assurance scheme. We will issue regular updates to highlight the issues identified in reviews and areas of good practice the reviews will undoubtedly identify.

We hope this update will increase your understanding and awareness of the scheme. If you would like any further information on the scheme, please contact the Criminal Quality Assurance Co-ordinators:

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Contents

1. Purpose and scope of the reviews.....	2	11. Perusing Crown disclosure packages.....	5
2. File selection procedures.....	2	12. Views of clients and other agencies.....	5
3. Marking scale.....	2	13. Summary criteria.....	5
4. Review processes.....	3	14. Timescales for the reviews.....	5
5. Equalities and diversity issues.....	3	15. Nominated solicitors.....	5
6. Case outcomes.....	4	16. Differences between peer reviews and compliance reviews.....	6
7. Precognitions at initial meetings.....	4	17. Communications with the profession....	6
8. Solicitors conducting research.....	4	18. Costs of the scheme	6
9. Work needed for the reviews.....	4		
10. Discussions with PFs.....	5		

1. Purpose and scope of the reviews

Q. Why is this quality assurance scheme being introduced? What will it achieve? Isn't it merely checking to see if solicitors kept tidy files, and won't really judge on the overall standard of representation being provided? Why not address advocacy too?

A. *The Criminal Quality Assurance Scheme will help give the public and the government assurance that we are getting value for the £100 million or so of public money spent on criminal legal aid every year. Our compliance auditors' reviews help ensure that solicitors run their offices well, but the QA scheme goes further to demonstrate the quality of service given to clients, the courts, and paid for by the tax payer.*

Quality Assurance for solicitors providing civil legal assistance has been in place since 2004. Quality Assurance is used by many professions and it is designed to support good quality professional services. It is not designed to 'catch-out' solicitors. Where peer reviewers identify practices that can be improved, the individual solicitor or firm is given an opportunity to do that.

The Civil QA Scheme is currently file-based. At present the Criminal QA scheme is also file-based and we expect the experienced peer reviewers to be able to make valid judgements about the service being provided on the basis of evidence in the files.

In the future, the scheme could develop to cover advocacy skills, but changes like this will not be introduced during the first three year cycle.

2. File selection procedures

Q. How will files be selected?

A. *A random selection procedure will be used for each solicitor in the firm to get a mix of 10 summary, solemn and appeal files which reflects the nature of criminal business the solicitor carries out. However, if a particular case is drawn to our attention, we may ask for this file over and above the 10 files.*

Files will be identified by selecting the nominated solicitor on the legal aid or ABWOR application. Where we cannot identify sufficient cases this way, we will use other methods such as time sheets, or duty claims.

Q. Will the 10 files be requested in one go?

A. *Yes. We will write to the compliance partner of the firm stating which 10 files we have selected for review for each solicitor in the firm.*

Q. How old will the files be that are to be reviewed?

A. *To ensure we get closed files, we will be selecting those where we have received a legal aid account (but not necessarily paid it). We will try to get the most recent cases.*

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

Q. Will duty files be reviewed?

A. *If duty cases are followed up by grants of full legal aid - yes, but not otherwise.*

3. Marking scale

Q. How does the marking scale work, and for a file to fail, against how many criteria would it have to fail?

A. *In summary cases, there are 25 criteria, in solemn 28, and in appeals 25. Not all criteria will apply to every case, as many are dependant on the way the case progresses or the plea tendered. According to the Peer Reviewer Guidelines (available in Part I of the Criminal Legal Assistance Handbook) the rule of thumb is that three failed criteria would normally lead to a failed file. However, that is only a guide, and the reviewers have discretion to use their professional experience in coming to decisions on the file.*

Q. Why do some of the questions relate to work that is no longer paid for on a time and line basis, in particular preparations for a guilty plea under the new solemn fee structure?

A. *The scheme applies equally to work paid for under fixed or block payments and that under time and line payments. The reviewers will, therefore, comment fully on such issues. As practising criminal solicitors themselves, the reviewers will understand the distinctions between different types of work and payment.*

4. Review processes

Q. What are the likely timescales for holding extended or final reviews?

A. *Depending on the issues involved, the extended review could be held immediately, especially if the routine review has identified serious systemic issues. For less serious matters, this review could be deferred for up to six months. Final reviews will normally take place between six and twelve months after the firm has been notified of a failed extended or special review.*

Q. What is a special review?

A. *In exceptional circumstances, the Law Society or the Board may ask the Criminal Quality Assurance Committee to agree to hold such a review outwith the usual cycle. For example, this may come from a complaint being investigated by the Law Society, or may follow on from issues identified by the Board at a compliance audit. The format is the same as an extended review, although no advance notice will be given of the files to be reviewed.*

Q. If reviews fail, how does this affect the Compliance Partner?

A. *The Board can take action against both the individual solicitor and the firm. Whilst the compliance partner may not always be directly affected, he/she would still be collectively affected if action was taken against the firm.*

Q. If a failed peer review ultimately leads to the Board considering de-registration, is it the

firm or individual solicitor who could be de-registered?

A. *Unlike the civil scheme, under which only firms can be de-registered, the criminal scheme allows for both. However, the whole process is set up to provide assistance so that the end result is not de-registration, but getting the solicitor or firm up to standard.*

Q. What types of things generally lead to a fail in the civil QA scheme?

A. *In civil cases, the most common issues are:*

- *private feeing of clients while they are on legal aid;*
- *failure to explain the clawback provisions;*
- *failure to issue letters of engagement.*

In criminal cases, we expect that issues like the defence not being investigated or followed up, or a client's instructions being ignored would lead to a fail. If no letters of engagement are in the file, we would not expect this to a failure, but their absence will be noted.

5. Equalities and diversity

Q. Why should this be a consideration, and why should solicitors be penalised if there are issues here?

A. *As a public body, we have the statutory responsibility to ensure we do not discriminate unlawfully in the delivery of our functions, and to promote positive race relations. Solicitors also have duties in relation to disability discrimination in particular. The Criminal QA Committee therefore agreed that, by monitoring whether solicitors are asking clients the questions on the equalities card, the quality assurance scheme should contribute to efforts to ensure that clients supported by legal aid are not being disadvantaged in this way.*

If, as we expect, equalities issues do not feature in many of the reviews, or solicitors identify and deal with them where they do occur, this will allow us to report positively on these matters.

Q. The current Equalities Card can be difficult to use with vulnerable clients.

A. Getting this information helps us monitor the profile of applicants for legal aid and consequently whether different groups have equal access to legal aid. We are trying to find ways of ensuring solicitors can record this information is done in appropriate practical and sensitive ways. If your client is unwilling or unable to answer the questions on the equalities card, you will not be penalised for this.

Q. The question asks whether all reasonable steps have been taken to address any issues relating to age, disability, gender, race, religion or belief and sexual orientation that may arise. Does this mean that solicitors now have to ask clients if they fall into these categories?

A. No - clients can choose whether, or which, equality categories on the legal aid application to answer and this approach will continue. As part of their review of files, peer reviewers will assess any evidence in the file that equalities issues (such as language, accessibility or cultural difficulties) arose and, if so, whether they have been identified, or addressed as appropriate.

6. Case outcomes

Q. There is a question which asks about the case outcome being "broadly within the range of expectation." Whose expectation is this, and how will reviewers in one part of the country know what goes on in other areas?

A. This "expectation" is not the Board's but that of the reviewer, based on their experience of conducting similar cases. The reviewers' experience means that they know that court work and case outcomes are not an exact science. They also know that there can be inconsistencies between different areas and different courts. Experience from civil and criminal QA in other jurisdictions has shown that reviewers can deal with geographical and other differences well.

Q. In a criminal case, a not guilty outcome is surely the most important consideration, and would over-ride any issues found in the file?

A. Not necessarily, as there may be problems identified with the legal processes, the solicitor's duties to the court, delays created by the solicitor in advancing the case or legal aid issues.

7. Precognitions at initial meetings

Q. Will reviews be marked down if no full precognition is taken? Solicitors are not paid for this.

A. No - the reviewers will only be looking for evidence you have taken adequate initial instructions from the client.

8. Solicitors conducting research

Q. Why will research be considered when solicitors are not paid for this?

A. The legal aid system does not have individual or additional fees for some areas of work, but these matters are still part of providing an effective service to the client.

9. Work needed for reviews

Q. This will bring extra work to solicitors in the form of file notes and recording of work, yet this has not been reflected in enhanced fees.

A. All areas of work are effectively covered by the existing block or fixed fees, if not under specific time and line payments. We do not consider any extra file notes or work will be too time-consuming or beyond that expected of a competent professional.

Proper note keeping and recording of work on the files can also bring wider benefits to the solicitor - for example, in appeal cases, where it can help set out the sequence of events and actions taken in the first instance case.

10. Discussions with Procurator Fiscals

Q. Do we have to keep records of all discussions with the PFs?

A. *We would expect that records or notes of all material discussions with PFs are already kept on file.*

11. Perusing Crown disclosure packages

Q. One of the criteria is whether the solicitor examined the disclosure package carefully. In summary cases, solicitors are not paid separately for this. Will solicitors need to have separate notes on the file to show how long they took to read the statements?

A. *Some solicitors may want to do this, but this may not necessarily show that the statements have been considered properly. It may become apparent to the reviewer that a line of questioning has not been followed up by what was in a witness statement.*

12. Views of clients and other agencies

Q. The reviews do not take into account the views of clients on the standard of representation they received, or any views of sheriffs or PFs. Will these views be taken into consideration?

A. *Not as part of the peer review process, which is based on the evidence in the file of work carried out. However, at the final stage, if we are considering de-registration as a result of failed reviews, it will be open to the solicitor to submit representations based on any views obtained from clients or other criminal justice agencies.*

13. Summary criteria

Q. The summary criteria include a question about advising clients about sentences before the SER has been received. Why is this not included in the solemn criteria?

A. *This was removed from the solemn criteria in an effort to keep the questions to a manageable level. It was not felt to be as relevant for solemn cases as it was for*

summary. However, we will closely monitor the need for this particular question in the summary criteria.

14. Timescales for the reviews

Q. How will you decide which firm is reviewed and when?

A. *Criminal QA Committee members will be reviewed first, closely followed by the peer reviewers. All solicitors will then be reviewed over a three-year period. The timetable will be determined by factors such as legal aid volumes and size of firms. Once reviewed, we will not review the firm again within the three-year cycle, unless a special review is required.*

Q. Who will review the peer reviewers?

A. *Peer reviewers will be reviewed by other peer reviewers, but from a different area.*

15. Nominated solicitors

Q. As files will be identified using the nominated solicitor, will they now need to become responsible for the overall management of the case?

A. *The nominated solicitor already has this responsibility. We recognise that more than one solicitor can have an input to the case, and that agency solicitors can also be used. Using the nominated solicitor to identify cases is the best initial way of ensuring all solicitors' cases are being reviewed, but where solicitors are not noted as nominated solicitors, other methods such as time sheets will be used.*

Q. If a problem is identified with a file during a routine review, where the work was done by someone other than the nominated solicitor, who will be held responsible for the problem, the solicitor doing the work, or the nominated solicitor.

A. *The nominated solicitor has the overall responsibility for the case, so both could be held responsible. The nominated solicitor delegates the work to other solicitors, but*

must still supervise the work carried out in the case to ensure that it is done properly.

16. Differences between peer reviews and compliance audits

Q. Is this process separate from compliance audits, or will it replace them? How will the reviews interact with those audits?

A. 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. Criminal QA is being administered by our Criminal Applications Department, although there will be close liaison with our Audit and Compliance Department.

17. Communications with the profession

Q. What plans are there to keep solicitors informed about how the scheme is operating?

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

18. Costs of the scheme

Q. How much will the scheme cost?

A. The annual budget is around £195,000. The expected costs of the criminal scheme represent about 0.2% of the total cost of criminal legal aid to the taxpayer.

Q. How much are peer reviewers paid?

A. Peer reviewers are paid the same rate as the civil peer reviewers, a daily rate of £385 plus VAT. A review of 10 files is expected to last half a day.