



# Report

## Annual Report on the Quality Assurance Scheme for Civil Legal Assistance

31 May 2024



## Introduction

Since 2003, the Law Society of Scotland ('Society') has been responsible for the quality assurance of civil legal assistance provided by solicitors. All firms registered to provide civil legal assistance are subject to the peer review process, which is jointly operated by the Scottish Legal Aid Board ('Board'), and the Society. The statutory basis for the Civil Quality Assurance Scheme ('Scheme') is set out in Rule C3 of the Law Society of Scotland Practice Rules 2011.

This report provides details of the statistics, issues, and findings, from the fourth and fifth cycles of the Scheme so far. The fourth cycle commenced in August 2017 and is now near completion. It was initially to run for five years, however, was extended to deal with a backlog of firm peer reviews caused by the suspension of the Scheme for seven months in the year 2020 throughout the COVID-19 pandemic.

The fifth cycle commenced in December 2023 and is now fully operational. This overlap between cycles initially required dedicating resources to starting the fifth cycle. However, with the fifth cycle now up and running, the focus has shifted back to completing the fourth cycle while advancing the fifth cycle alongside it.

## The Civil Legal Aid Quality Assurance Sub-Committee

The Civil Legal Aid Quality Assurance Sub-Committee ('Sub-Committee') is a specialist Sub-Committee that manages the Scheme. The Sub-Committee consists of five solicitors with experience of undertaking civil legal assistance work for clients in private practice, one of whom will have been nominated by the Board. There are also five non-solicitors, one of whom is nominated by the Board. The Convener of the Sub-Committee is a solicitor with experience in private practice nominated by the Society and the Board. All Sub-Committee members including, its Convener and Vice- Convener are formally appointed by the Regulatory Committee on the recommendation of a panel of the Sub-Committee.

The work of the Sub-Committee is supported by Erini Seindanis, Quality Assurance Administrator ('Administrator') who acts as the secretary to the Sub-Committee, managing the peer review process and all Sub-Committee business. Professor Alan Paterson OBE, Director of the Centre for Professional Legal Studies at the University of Strathclyde, on whose research the Scots peer review programme is based, attends the Sub-Committee as the professional adviser to the Society and the Board on peer review.



The Sub-Committee consisted of the following members over the fourth cycle of reviews to date:

<b>Name of Member</b>	<b>Membership Position</b>
Fiona Mundy	Solicitor Convener
Marie-Louise Fox	Solicitor Vice-Convener (Board's representative)
Jennifer Laughland	Solicitor
Ian Woodward-Nutt	Solicitor
Claire Kettlewell	Solicitor
Hazel Thoms	Non-Solicitor (Board's representative)
Stuart Duffin	Non-Solicitor
David Crossan	Non-Solicitor
Aaliya Seyal	Non-Solicitor (ended April 2024)
Clair McLachlan	Solicitor (ended August 2022)
Lesley Robb	Solicitor (ended May 2022)
Grant Horsburgh	Non-Solicitor (ended May 2022)
Graeme Hill	Non-Solicitor (Board's representative) (ended April 2022)
Ann Hill	Non-Solicitor (ended November 2021)
Norman Gourlay	Non-Solicitor (ended January 2020)
Chris Reddick	Non-Solicitor (ended December 2018)

The Sub-Committee consisted of the following members over the fifth cycle of reviews to date:

<b>Name of Member</b>	<b>Membership Position</b>
Fiona Mundy	Solicitor Convener
Marie-Louise Fox	Solicitor Vice-Convener (Board's representative)
Jennifer Laughland	Solicitor
Ian Woodward-Nutt	Solicitor
Claire Kettlewell	Solicitor
Hazel Thoms	Non-Solicitor (Board's representative)
Stuart Duffin	Non-Solicitor
David Crossan	Non-Solicitor
Aaliya Seyal	Non-Solicitor (ended April 2024)



## Peer Reviewers

All Peer Reviewers ('Reviewers') are solicitors who have current or recent (i.e. within the last year) experience in providing civil legal assistance. They are asked to peer review in areas of practice where they have suitable experience, although they need not be a specialist in these areas. Reviewers are not permitted to assess any firm with whom they might be in competition or with whom they have a connection.

The Reviewers meet on an annual basis to discuss issues arising from peer review and receive feedback on the statistical outcomes of peer reviews from the Sub-Committee's professional adviser on peer review. This assists with consistency of marking which is important for the fairness of the process to all firms. Consistency is further assisted by double marking approximately 25% of firms.

The Reviewers conducting reviews consisted of the following solicitors over the fourth cycle of reviews to date.

Reviewer	Firm
Kenneth Bonnington	Cartys Solicitors
Fiona Carey	Brophy Carey & Co
Lynne Collingham	T C Young Solicitors
Fiona Cook	Cook, Stevenson & Co
Kevin Duffy	Russells Gibson McCaffrey
David Forbes	Walker Laird
Morag Fraser	Fraser Shepherd
Gordon Ghee	Nellany & Co
Lynn Herbert	Lynn Herbert & Co
Fraser Latta	Latta & Co Solicitors
Charles McGinley	Gray & Co
Richard Mill	Millard Law
Lucy Millard	Millard Law
Edward Christie	Ross & Connel
Michael Ford	Ross Strachan & Co
Tanya Steel	Lindsay Solicitors
Jennifer Gallagher	Lindsays
Sarah Jack	Drummond Miller
Morag Macintosh	MacLeod & MacCallum (ended March 2024)
Pauline Ward	Kee Solicitors (ended January 2024)
Paul Brown	Brown & Co (ended July 2021)
Mark Thorley	Thorley Stevenson (ended December 2020)
Grant Knight	TC Young (ended February 2019)
Iain Nicol	Balfour & Manson (ended December 2018)



The Reviewers conducting reviews consisted of the following solicitors over the fifth cycle of reviews to date.

Name	Firm
Kenneth Bonnington	Cartys Solicitors
Fiona Carey	Brophy Carey & Co
Lynne Collingham	T C Young Solicitors
Fiona Cook	Cook, Stevenson & Co
Kevin Duffy	Russells Gibson McCaffrey
David Forbes	Walker Laird
Morag Fraser	Fraser Shepherd
Gordon Ghee	Nellany & Co
Lynn Herbert	Lynn Herbert & Co
Fraser Latta	Latta & Co Solicitors
Charles McGinley	Gray & Co
Richard Mill	Millard Law
Lucy Millard	Millard Law
Edward Christie	Ross & Connel
Michael Ford	Ross Strachan & Co
Tanya Steel	Lindsay Solicitors
Jennifer Gallagher	Lindsays
Sarah Jack	Drummond Miller
Morag Macintosh	MacLeod & MacCallum (ended March 2024)
Pauline Ward	Kee Solicitors (ended January 2024)

### Peer Review Criteria

Rule C3 of The Law Society of Scotland Practice Rules 2011 requires all practitioners to comply with the guidelines published by the Society in providing civil legal assistance. These guidelines are set out in the form of the Peer Review Criteria. The Society has published a detailed [Peer Review Manual](https://www.lawscot.org.uk/media/tnvj5eya/peer-review-manual.pdf), which can be found on the Society's website <https://www.lawscot.org.uk/media/tnvj5eya/peer-review-manual.pdf>, to assist solicitors in fulfilling the requirements of quality assurance.

All criteria are applied by the Reviewer where relevant to the file being reviewed and the file is scored against each of the criteria according to the following marking scale.

Mark	Meaning
1	Below requirements
2	Meets requirements
3	Exceeds requirements
C	Cannot Assess / Not Enough Information
N/A	Not Applicable



The Current Peer Review Criteria are as follows:<sup>1</sup>

*Initial meeting(s)*

1. How effective were the solicitor's initial fact and information gathering skills, including the identification of any additional information required and the taking of steps necessary to obtain it?
2. Was the client given accurate and appropriate advice regarding
  - a) the potential case, including whether it is stateable;
  - b) the client's eligibility for advice and assistance, especially if the client is not admitted, and whether the advice and assistance Mandate (Declaration) is properly signed and dated by both the solicitor and client; and
  - c) legal aid more generally, including the application of regulation 18 and advice and assistance, including possible clawback and the impact of legal aid on expenses?
3. Is there evidence on file or in a letter to the client of:
  - a) An appropriate terms of engagement letter, where applicable;
  - b) a note of agreed actions;
  - c) a request to the client for further information to be obtained from the client, where required; and
  - d) an assessment as to whether any urgent steps were required/appropriate?

*Continuing Work*

4. Did the solicitor take appropriate steps to carry out further investigation to progress matters for the client within a reasonable timescale?
5. Did the solicitor communicate appropriately with others, and where appropriate, pursue settlement or agreement on relevant issues?
6. Did the solicitor give appropriate advice to the client, where relevant, on alternative options, such as litigation and mediation?
7. Has the solicitor

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<sup>1</sup> Further details as to the Criteria and how they are interpreted can be found in the Peer Review Manual.



- a) identified the need for appropriate experts, other reports or counsel
- b) applied for sanction / increase(s) in authorised expenditure in accordance with the guidelines, and if granted, instructed / obtained the appropriate experts / Counsel / reports?

8. Is there evidence of adequate preparation for each diet, debate or proof, to include (as appropriate) the list of witnesses, productions and list of authorities as appropriate to the facts of the case?

*Throughout the case*

9. a) After the initial meeting(s), did the solicitor make use of, and provide accurate and appropriate advice to the client on, legal aid and advice and assistance, and is the legal aid Mandate (Declaration) properly signed and dated by both the solicitor and the client, all in accordance with the relevant guidelines;

b) After the initial meeting(s), did the solicitor give accurate and appropriate legal advice to the client?

10. Did the solicitor take steps identified/agreed with the client, within a reasonable timescale given the circumstances of the case?

11. Did the solicitor keep the client informed of progress / advised as to next steps / further procedure and provide accurate and appropriate advice, including following the receipt of substantive correspondence (including offers / proposals from the opponent?

12. Where an offer/proposal is made, is there evidence of accurate and appropriate advice having been given to the client on the terms of the offer/proposal, its reasonableness and the consequences for the client of acceptance/rejection, including the potential impact of expenses/clawback?

*Conclusion of the case*

13. a) Has the solicitor taken appropriate steps to close the file and communicate that to the client?

b) Where judgment joint minute or extra-judicial terms of settlement are issued, has the solicitor advised the client as to the judgment, joint minute or extra-judicial terms of settlement are including advice on expenses, property recovered and preserved, diligence on decree, prospects of appeal?

14. Has the account been submitted to SLAB in accordance with guidelines and necessary and appropriate steps been taken in relation to recovery of expenses / handling of property recovered and preserved?



15. Has the solicitor taken all reasonable steps to address any issues relating to age, disability, gender, race, religion or belief and sexual orientation which arose in the course of the case?

An additional mark will also be given for the file as a whole, with 1 indicating very poor performance up to 5 being excellent performance.

### Statistics from the Fourth Cycle (August 2017 to May 2024)

#### **Sub-Committee Decisions**

Reviewers prepare a report for the Sub-Committee outlining the recommended marking given for each file reviewed for an individual firm including comments on good practice and areas for improvement. The Sub-Committee then makes their decision based on the information provided by the Reviewers. The Sub-Committee may pass a firm with one of two grades: “good pass” or “pass”. Alternatively, the Sub-Committee may ask a firm for comments on a particular issue outlined in a report before passing a firm or coming to a decision of whether a further review should be instructed. If the Sub-Committee concludes that a firm should fail its routine review, the Sub-Committee may decide to schedule an immediate extended review for serious breaches of the review or may decide that a period of approximately six to nine months is required for the firm to rectify issues before a further review, being a deferred extended review. A special review can be instructed where the Sub-Committee have been alerted to a particular concern in the firm’s civil legal assistance procedures. A final review is instructed where the Sub-Committee considers the outcome of a further review is unsatisfactory.

The following statistics have been gathered from the Sub-Committee’s decisions for the fourth cycle:

<b>Sub-Committee Decisions</b>	<b>No.</b>
Passes	468
Matters continued for comments from firm	151
Extended reviews instructed	12
Deferred extended reviews instructed	47
Special reviews instructed	3
Final reviews instructed	9

\*Note: as at 31 May 2024 there are 484 firms on the Civil Register.





## Areas of Good Practice in the Fourth Cycle

The data collected from the Reviewer's case reports indicates the following areas of review criteria where solicitors are excelling:

- Initial fact and information gathering skills – 773 **(9.27%)** files received an above average score.
- Appropriate steps taken to carry out further investigation to progress matters for the client within a reasonable timescale – 730 **(8.75%)** files received an above average score.
- Appropriate communication with others - 778 **(9.33%)** files received an above average score.
- Accurate and appropriate legal advice provided – 711 **(8.52%)** files received an above average score.
- Client kept informed – 787 **(9.43%)** files received an above average score.

\*Statistics based on a total of 8,337 files.

\*Percentage calculated on approximate value.

## Areas for Improvement in the Fourth Cycle

The data collected from the Reviewer's case reports indicates the following areas of review criteria where there are areas of improvement for solicitors:

- Fully completed and signed legal aid/advice and assistance declaration – 1,093 **(13.11%)** files received a fail mark or a Cannot Assess / Not Enough Information mark.

Fully executed declarations are evidence of valid applications and grants of civil advice and assistance and civil ABWOR legal aid.

For the purposes of quality assurance, individual files will fail the quality assurance criteria if there is:

- a blank, signed declaration.
- a completed, unsigned declaration by both applicant and solicitor.

Since 16 March 2020, the Board implemented changes for civil legal aid practitioners which Reviewers have taken into account when marking files opened after this date.



One of the more significant changes is that files that are opened after 16 March 2020, do not need to be signed by the client. One of the reasons for this is because clients and solicitors met via video conference during the COVID-19 pandemic, which is still common today. It is important to note that including evidence for why the client has not signed the declaration is best practice. Previously, a file would have automatically failed if the declaration was not signed by the client.

The Board's full guidance regarding legal aid mandates can be found on [their website](#).

- Evidence of appropriate terms of engagement letters on files – 1,236 (**14.82%**) files received a fail mark or a Cannot Assess / Not Enough Information mark.

The most common deficiencies identified by Reviewers with firms' terms of engagement letters is the lack of information provided to a client regarding complaints to the Scottish Legal Complaints Commission ('SLCC').

The Law Society of Scotland's guidance provides that Terms of Engagement letters should include the following information:

*"In addition to advising clients about the existence of the Client Relations Manager in the firm, the terms of business letter must signpost clients to the SLCC, as the single gateway for receipt of all legal complaints, if they remain dissatisfied with how their complaint has been dealt with by the firm. The letter must set out contact details for the SLCC, including the telephone number, address and email address. A link to the SLCC's website which contains information about how to make a complaint, including an online complaint form would also be helpful".*

Reviewers will mark this review criteria down if the full information for the SLCC is not provided in a firm's terms of engagement letter. The Society's full guidance on terms of engagement letters can be found in the [Rules and Guidance section of the website](#).

\*Stats based on a total of 8,337 files.

\*Percentage calculated on approximate value.



## Overall File Marks in the Fourth Cycle

From the Reviewer's reports, the following statistics are found for the overall marking of a file.

Overall Score of File	No. of files	% of files
1	104	1.24%
2	799	9.58%
2.5	61	0.73%
3	5778	69.30%
3.5	273	3.27%
4	1214	14.56%
4.5	7	0.08%
5	56	0.67%

\*Statistics based on a total of 8,337 files.

\*Percentage calculated on approximate value.

It should be noted that although the typical overall marking of files is 1-5, Reviewers award a 2.5 mark to show the marginal failing of a file and award a 3.5 mark to show an above average passing of a file.

The statistics show that the great majority of files pass review with an average score of 3. It is also good to see that approximately 18.58% of files are receiving an above average mark, and approximately 11.55% of files are failing review overall.

## Statistics from the Fifth Cycle (December 2023 to May 2024)

### Sub-Committee Decisions

The firms of Reviewers and Sub-Committee members are reviewed first at the start of a new cycle. Their files are also double marked. The review of all these firms have now been actioned, with some results pending. Overall, the review of twenty-nine firms have been actioned, which includes a small number of other firms that are separate to those of Reviewers and Sub-Committee members.



The following statistics have been gathered from the Sub-Committee's decisions for the fifth cycle:

Sub-Committee Decisions	No.
Passes	7
Matters continued for comments from firm	1
Extended reviews instructed	0
Deferred extended reviews instructed	0
Special reviews instructed	0
Final reviews instructed	0

\*Note: as at 31 May 2024 there are 471 firms on the Civil Register.

### Areas of Good Practice in the Fifth Cycle

The data collected from the Reviewer's case reports indicates the following areas of review criteria where solicitors are excelling:

- Initial fact and information gathering skills – 469 (**87.17%**) files received an average score, and 65 (**12%**) files received an above average score.
- Appropriate steps taken to carry out further investigation to progress matters for the client within a reasonable timescale – 55 (**10.22%**) files received an above average score.
- Appropriate communication with others - 73 (**13.56%**) files received an above average score.
- Accurate and appropriate legal advice provided – 57 (**10.59%**) files received an above average score.
- Client kept informed – 81 (**15.05%**) files received an above average score.

\*Statistics based on a total of 538 files.

\*Percentage calculated on approximate value.

### Areas for Improvement in the Fifth Cycle

The data collected from the Reviewer's case reports indicates the following areas of review criteria where there are areas of improvement for solicitors:

- Fully completed and signed legal aid/advice and assistance declaration – 72 (**13.38%**) files received a fail mark or a Cannot Assess / Not Enough Information mark.



- Evidence of appropriate terms of engagement letters on files – 60 (11.15%) files received a fail mark or a Cannot Assess / Not Enough Information mark.

In January 2024 the Board issued revised declaration guidance for Reviewers to further assist them and firms in applying the required approach to assessing declarations before, during, and after the COVID-19 pandemic.

### Statistics from Cycles One to Four

Sub-Committee Decisions	1 <sup>st</sup> Cycle (2005-2007)	2 <sup>nd</sup> Cycle (2008-2010)	3 <sup>rd</sup> Cycle (2011-2017)	4 <sup>th</sup> Cycle (2017- 2024)
Continued for comments	94 (14%)	188 (31%)	303 (45%)	151 (29%)
Extended/Deferred Extended Reviews	42 (6%)	37 (6%)	59 (9%)	59 (11%)
Special Reviews	11 (2%)	3 (0.5%)	3 (0.5%)	3 (0.5%)
Final Reviews	18 (3%)	10 (2%)	14 (2%)	9 (2%)

\*Statistics from the fifth cycle have not been included as it is too early in the cycle (the majority of firm's reviewed are those of Reviewers and Sub-Committee members, and the inclusion of these results alone would skew the data).

The statistics show that from the first to the third cycle there was an increase in the number of firms that were asked to comment on particular issues, whereas this decreased by 16% in the fourth cycle, which indicates that more firms are passing their review with less queries being identified by Reviewers or the Sub-Committee.

Interestingly, there is an increase in the number of firms that progressed to an extended or deferred extended review. The purpose of the Scheme is continued improvement rather than exclusion. Therefore, if issues are identified by Reviewers in a firm's routine review, firms are given the opportunity to rectify such issues in a further review. However, the Sub-Committee usually gives firms an opportunity to provide comments before an extended or deferred extended review is initiated.

The Sub-Committee works to maintain and improve the quality of service and legal work provided by solicitors using legal aid and so they require an explanation and confirmation from firms before they will update the firm's compliance certificate.

Throughout all cycles there is a minority of firms that progress to special and final reviews and may require guidance or training in running files that meet review criteria.



## Good Practice when Preparing Files for Review

When a firm is selected for a routine review a list of files is sent to the Compliance Manager of the firm. It should be noted that a Reviewer can only assess each file on the basis of the information contained on the file. Therefore, the following guidelines should aid solicitors when preparing their files for review to avoid negative comments/markings from a Reviewer:

- If there are multiple files for the same matter, provide all of these.
- Ensure a copy of all standard letters sent to clients are placed on the file.
- Provide copies of all legal aid online applications, correspondence, and decisions.
- Ensure file notes are legible if handwritten and provide evidence that the criteria have been met.
- There is no obligation on firms to keep a copy of the account on a file, however the presence of a copy of the account can be of assistance to the review in evidencing that certain criteria have been fulfilled.
- Ensure fully completed and signed legal aid declarations are placed on each file. Incomplete or defective declarations are not only costly to the firm but are a significant ground for failing files. The Board's most recent guidance on declaration forms should be adhered to.
- If there are both advice and assistance and legal aid files for the same matter, provide both for review.
- Chronologically ordered files are preferred as they assist Reviewers in navigating the file, which impacts their assessment.
- If files are not available for review, alert the Administrator promptly to obtain replacement file details, incomplete sets of files should not be sent without consulting the Administrator.

## Duration of Reviewing Files

The Children's Quality Assurance Scheme and the Criminal Quality Assurance Scheme generally allow their Reviewer's about 21 days to complete a review.

The Scheme has aligned itself with the Children's and Criminal's Scheme by extending the time period for review. Reviewers are now given 21 days from the day they receive their allocated files to complete their review. If Reviewers require more time, this is communicated and discussed with the Administrator.



## Working Group for Electronic Reviews

The peer review process usually involves hard copy files that are collected from selected firms and delivered to the allocated Reviewer(s) by courier service.

Firms are also given the option to present their files electronically. The platform the Society uses to allow electronic reviews is *Egress Secure Workspace*. This is a secure platform where permission is granted to the relevant firm to upload their files and the allocated Reviewer is given permission to access the files for review.

More firms have become paperless and express a preference for electronic file submission during routine review.

At the Sub-Committee's August 2023 meeting a Working Group was established to address Peer Reviewer's concerns in relation to the increased frequency of electronic reviews.

The Working Group is in the process of implementing guidance to assist firms in presenting their electronic files in a manner that Reviewers can easily navigate. The Administrator has consulted a sample of about twenty-two large, medium, and small firms to ensure that the proposed guidelines are helpful and appropriate for those following it. The Administrator is waiting to receive feedback from the firms, which will be provided to the Working Group to consider before guidance is implemented.

## Probationary Peer Reviewers

In December 2023, the Sub-Committee decided that four out of the six Probationary Peer Reviewers had reviewed enough files to mark files solo. In the next couple of months, the Sub-Committee will check back in on the two remaining Probationary Peer Reviewers.

## Long Serving Reviewers

Fortunately, there are Reviewers who have been with the Scheme since its inception and others who have remained with the Scheme for many years. The Society decided that as of March 2024, long serving Reviewers who are ceasing their role will be formally recognised for the vital work they played in the Scheme.

## Process for Civil Registration

New firms, or firms wishing to commence providing civil legal assistance, are required to both register with the Board and obtain a compliance certificate from the Society.

In order to register with the Board, the firm must provide details of how it intends to adhere to the Society's Ten Administrative Requirements for Civil Registration. The Board provides details of these ten requirements, along with an example response.



Once this information has been received and deemed satisfactory by the Board's Compliance Team, they contact the Society's Administrator, who will in turn contact the firm with regard to their application and ask for a Registration Questionnaire to be filled out.

The completed Registration Questionnaire, together with information from previous peer reviews of the practitioners in the firm is provided via email to a panel of the Sub-Committee to consider whether the firm would comply with rule C3 of the Law Society of Scotland Practice Rules 2011 and relative guidance to provide civil legal assistance.

The panel's recommendation is then communicated by email to the full Sub-Committee for approval. Once the full Sub-Committee have approved the firm's registration, the Administrator issues the firm with their compliance certificate and informs the Board that the firm can be added to the Civil Register.

Registration may be approved, subject to additional training from the Board.

Until this process is complete, and the firm has received their compliance certificate, no civil legal assistance work can be carried out within a firm. Applications for civil legal assistance will not be accepted by the Board, and no payments will be made for any work carried out prior to registration.

The Administrator and Sub-Committee recognise the urgency of these applications and strive to process these requests efficiently and promptly.

If you would like any further information, please contact Erini Seindanis at [EriniSeindanis@lawscot.org.uk](mailto:EriniSeindanis@lawscot.org.uk).





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