



Legal Aid
Agency

Independent Peer Review Process Document

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1 INTRODUCTION

- 1.1 Peer Review, is the assessment by a panel of independent experienced legal practitioners of the standard of work performed by Legal Aid Providers under the Standard Legal Aid Contracts with the Legal Aid Agency (“**LAA**”), as described in this Process Document. The Peer Review assessment is undertaken against Peer Review Criteria and Guidance (details can be found at Appendix 1), Quality Guides, (<https://www.gov.uk/guidance/legal-aid-agency-audits>) and levels of performance as developed with input from the LAA and Representative Bodies. The intention of the Independent Peer Review Process is to ensure quality standards are met and enhance the standards of legal work carried out under public funding.
- 1.2 The purpose of this document is to describe the Peer Review Process. Reference should be made to the Standard Legal Aid Contracts (“**the Contract**”) between the LAA and Provider for all issues relating to the contractual implications of decisions made within Peer Review. This version, published in XXXXX, updates previous versions of the Independent Peer Review Process Document. Any terms which are capitalised but not defined within this document shall have the meaning given to them in the Contract.
- 1.3 Peer Review is used as an integral part of the LAA provider management strategy as quality assurance of the advice and legal work of providers of Legal Aid. The scope of this Independent Peer Review Process document is limited to such provider management and contracting strategy. The Peer Review Report produced as a result of the Peer Review process, is regarded as a conclusive assessment of the professional, legal quality of the advice and work evaluated by the relevant Peer Reviewer. The Contract Standard Terms specifies that both the LAA and Providers agree to accept the validity of and be bound by the outcome of the Independent Peer Review Process.
- 1.4 The Independent Peer Review Process has been developed from an initial methodology¹ and built upon to reflect feedback from Peer Reviewers, Providers and representative bodies including the Law Society and Legal Aid Practitioners Group. The Independent Peer Review Process developed in England and Wales is most recently recognised in the UNODC (United Nations Office on Drugs and Crime) Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices². Since 2005, the process has been used to conduct more than 6,600 Peer Reviews in England and Wales and has been used in over 15 countries worldwide. The LAA considers that the Independent Peer Review Process

¹ See Quality and Cost, The Stationery Office, 2001 and Evaluation of the Public Defender Service in England and Wales, The Stationery Office, 2007.

² https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf

See also Sherr, A. and Paterson, A., “Professional Competence, Peer Review and Quality Assurance in England and Wales and in Scotland”, 45 (2008), Alberta Law Review 151;

represents the best method available to measure the quality of advice and legal work of Providers.

2 INDEPENDENT PEER REVIEW PROCESS

Definition of Independent Peer Review Process

- 2.1 The Independent Peer Review Process utilised by the LAA operates within this framework and methodology developed and managed by a research and operations team based at the Institute of Advanced Legal Studies. Operation of the process continues under the aegis of the Independent Consultant.³
- 2.2 The Independent Peer Review Process involves the assessment of the work performed by Legal Aid Providers, carried out by a panel of independent, experienced and trained legal practitioners against a set of Peer Review Criteria and Guidance, Quality Guides and levels of performance as developed with input from the LAA and Representative Bodies. It is based on an assessment of a sample of a Provider's case files in a specific category of law. The Independent Consultant is responsible for moderating the consistency and training of Peer Reviewers, to ensure that the Peer Review 'rating' given by the Peer Reviewer is the shared view of the panel of Peer Reviewers.
- 2.3 Following consideration of the files using the Peer Review Criteria and Guidance and Quality Guides, a professional judgement on the quality of advice and legal work is made.
- 2.4 Peer Reviews are category specific and are carried out by practitioners who are experienced and skilled in that area of law.
- 2.5 Peer Reviews and any representations received from a Provider are processed remotely. Peer Reviewers work from home or at their own offices.
- 2.6 Providers are required, in accordance with the Contract Standard Terms, to reimburse the LAA for the standard Peer Review costs where they receive a confirmed Peer Review rating of Below Competence (4) or Failure in Performance (5) in their first and second Peer Review.

Peer Review Criteria and Guidance and Quality Guides

- 2.7 The assessment of files by Peer Reviewers is carried out using the standard Peer Review Criteria and Guidance, Quality Guides and a rating system developed by the original researchers in consultation with

³ The Independent Consultant is Professor Avrom Sherr who led the research behind Quality and Cost and is the architect of Independent Peer Review. He is based at the Institute of Advanced Legal Studies, University of London. Professor Alan Paterson and Professor Avrom Sherr, Peer Review and Cultural Change: Quality Assurance, Legal Aid and the Legal Profession (ILAG, 2017).

Peer Reviewers, representatives of the Law Society⁴ and law centres and advice agencies within the not-for-profit sector.

2.8 The Peer Review Criteria and Guidance are set out in Appendix 1 to this document and the Quality Guides for each category can be found on <https://www.gov.uk/guidance/legal-aid-agency-audits> and are designed to assess the quality of the following elements (set out in the Peer Review Criteria and Guidance):

- The information gained by the Provider from the Client and other sources.
- The advice given to a Client by the Provider, based on that information.
- The steps taken by the Provider following that advice.

These are an important aid to ensuring consistent evaluation by Peer Reviewers when making their overall assessment.

2.9 There are two different sets of Peer Review Criteria: Civil and Crime. There are also different generic sets of Peer Review Criteria and Guidance and Quality Guides for each category of law that is Peer Reviewed, currently: Crime, Family, Housing, Immigration & Asylum and Mental Health. The Civil Peer Review Criteria and Guidance and Quality Guides are used for the Peer Review of Civil categories of law and the Crime Peer Review Criteria and Guidance and Quality Guide are used for the Peer Review of criminal legal aid work.

2.10 There are further legal work and generic Peer Review Criteria and Guidance and Quality Guides, applicable to each category of Civil law

2.11 Following their assessment of the files using the relevant Peer Review Criteria and Guidance and Quality Guides, the Peer Reviewer makes an overall professional judgement concerning the quality of advice and legal work provided by the Provider in a category of law, based on the professional experience and judgement of the Peer Reviewer.

Civil Peer Review Criteria and Guidance and Quality Guides

2.12 The Civil Peer Review Criteria and Guidance were initially developed as part of the Quality and Cost research. The Peer Review Criteria and Guidance were then further refined and adapted in consultation with Peer Reviewers and other specialist practitioners. Category-specific Peer Review Criteria and Guidance for; Family, Housing, Immigration & Asylum and Mental Health were developed to be incorporated into Peer Review Criteria and Guidance to elaborate the use of the criteria. A copy of the Civil Peer Review Criteria and Guidance is located in Appendix 1.

⁴ The original Crime Peer Review Criteria and Guidance were developed together with Professor Ed Cape of the University of the West of England with advice and assistance from Anthony Edwards, then Professional Head of the Public Defender Service, the Peer Reviewers, consultees appointed by the professional bodies and other members of the research team.

2.13 Each Civil category of work also has a specific Quality Guide prepared by the Peer Reviewers for use by both Peer Reviewers and Providers, concentrating on thematic elements of work which have been found inadequate in that category. Quality Guides help to inform the Peer Review assessment and are useful tools for Providers to ensure best practice. The current Quality Guides can be found on <https://www.gov.uk/guidance/legal-aid-agency-audits>

Crime Peer Review Criteria and Guidance and Quality Guides

2.14 The Peer Review Criteria and Guidance developed for Crime were informed by a number of sources:

- **Investigative stage Peer Review criteria** – During the first phase of the Public Defender Service evaluation research⁵, criteria were created for Peer Review of police station files. These were developed using a number of sources, including the transaction criteria of the LAA⁶ and the Standards of Performance that are used in the police station accreditation process which is administered jointly by the LAA and the Law Society.
- **Current standards of good practice** – The magistrates' court duty solicitor accreditation process utilises standards of performance relevant to the specific role of a duty solicitor. In addition, the Law Society publication 'Criminal Defence: Good Practice in the Criminal Courts' (Ede, R. and Edwards, A.; 2017) sets out guidance on standards of good practice for criminal defence lawyers.

2.15 Using the sources in paragraph 2.13 above, the Crime Peer Review Criteria and Guidance were drafted by research solicitors (Ed Cape and Avrom Sherr) and amended and further developed during the training for the first Crime Peer Reviewers. A copy of the Crime Peer Review Criteria and Guidance is located in Appendix 1.

2.16 Crime work has a specific Quality Guide prepared by the Peer Reviewers for use by both Peer Reviewers and Providers, concentrating on thematic elements of work which have been found inadequate in that category. Quality Guides help to inform the Peer Review assessment and are useful tools for Providers to ensure best practice. The current Quality Guides can be found on <https://www.gov.uk/guidance/legal-aid-agency-audits>

Descriptions of Peer Review Ratings

2.17 The Peer Review Criteria are marked on a sliding scale (1–5), and, in some cases, with Yes/No answers. For each Civil file Peer Reviewed, an overall file score of quality is made with a 1–5 rating. For Crime files, a file score of 1–5 is given for each stage of the case (Investigation Stage,

⁵ See 1 above.

⁶ *Transaction Criteria*, Sherr, Moorhead and Paterson, HMSO, 1992

Magistrates Court Stage and Crown Court Stage), as well as an overall file score of quality for each file.

2.18 Following the Peer Review of a random file sample of files for a Provider, a separate overall rating is given for the overall quality of legal advice and work of the Provider in that category Peer Reviewed, based on the same ratings, as below.

2.19 The ratings are:

- Excellence (1)
- Competence Plus (2)
- Threshold Competence (3)
- Below Competence (4)
- Failure in Performance (5)

2.20 The Provider's overall rating gives an assessment of the work of a Provider as Peer Reviewed by the Peer Reviewers over a number of files.

Ratings Indicators

2.21 The overall indicators of the ratings are as follows:

Excellence (1)

2.22 Indicators of Excellence in the standard of Contract Work include (but are not limited to):

- Clients' instructions are fully and appropriately recorded.
- Communication, advice and other work are tailored to each individual Client's circumstances.
- Clients are all advised correctly and in full.
- All issues are progressed comprehensively, appropriately and efficiently.
- There is a demonstration of in-depth knowledge and appreciation of the wider context.
- There is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for Clients.
- The Provider adds value to their cases, taking a fully proactive approach.
- There are no "areas for major improvement".

Competence Plus (2)

2.23 Indicators of Competence Plus in the standard of Contract Work include (but are not limited to):

- Clients' instructions are appropriately recorded.
- Advice and work are tailored to the individual Client's circumstances.
- Clients are advised correctly and in full.
- Issues are progressed comprehensively, appropriately and efficiently.
- Tactics and strategies are employed to achieve the best outcomes for Clients
- The Provider adds value to cases and takes a proactive approach.

Threshold Competence (3)

2.24 Threshold Competence is the standard of competence required by the Contract. Indicators of Threshold Competence in the standard of Contract Work include (but are not limited to):

- Clients' instructions are appropriately recorded.
- There is adequate but sometimes limited communication with the Client.
- The advice and work is adequate although it may not always be extensive and may not deal with other linked issues other than the presenting issue.
- There may be areas that the Provider will need to address in order to progress towards Competence Plus (2) or Excellence (1).

Below Competence (4)

2.25 Below Competence demonstrates that Contract Work has been conducted below the standard which Clients are reasonably entitled to expect from a solicitor. Indicators of Below Competence in the standard of work include (but are not limited to):

- Information is not being recorded or reported adequately or accurately.
- Communication with the Client is sometimes of poor quality.
- The advice and other work is inadequate.
- Some cases are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or other work is sometimes inadequate.
- Ethical issues or the prevention of fraud are not sufficiently addressed.
- There are lapses below the required standard of Threshold Competence.

Failure in Performance (5)

2.26 Failure in Performance demonstrates that Contract Work has been conducted substantially below the standard which Clients are reasonably entitled to expect from a solicitor. Additionally, there has been at least one major or complete failure to conduct work to this standard. Indicators of Failure in Performance in the standard of work include (but are not limited to):

- Information is not being recorded or reported adequately or accurately.
- Communication with Clients is often of poor quality.
- Cases in general are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or work is often inadequate.
- Ethical and/or fraud issues exist.
- There is a detrimental service to Clients, or there is no meaningful service at all, or there is a service that potentially could lead to prejudice against a Client.

Additional notes

2.27 The indicators set out above as related to the performance of a Provider over a file sample and those mentioned in the category specific Quality Guides are examples of the standard of work they describe. The indicators are not limited to the above. Nor are individual indicators necessarily conclusive. The indicators above are provided to develop an understanding of each rating and how one rating differs from another. Each file is unlikely to evidence all the indicators. Peer Reviewers use the experience of running their own cases and supervising the cases of others to assess the quality of work shown in individual files as well as the Provider's overall quality of work in that category, to assess the quality of Contract Work to be demonstrated in the Peer Review Report.

2.28 In summary, overall ratings of Excellence (1), Competence Plus (2) and Threshold Competence (3) indicate that a Provider is meeting or exceeding the requirements of the Contract, whilst ratings of Below Competence (4) and Failure in Performance (5) are in breach of the Contract requirements.

Making a Judgement on Quality

2.29 Following the assessment of 12 files in a category of law, the Peer Reviewer prepares a Peer Review Report. The Peer Review Report details the key findings extracted from the individual files, with particular emphasis on trends and patterns identified across the random file sample. The Peer Reviewer will consider all the findings and all pertinent information against the criteria, as evidenced from the files and will determine the overall rating, which is recorded on the Peer Review Report.

2.30 The Peer Reviewer will not automatically arrive at the rating simply by averaging scores on individual files. The essence of the Independent Peer Review Process is that Peer Reviewers use their skill, experience and training to inform the rating of the Provider from the trends and patterns they see on the individual files. The entire process and the management by the Independent Consultant of areas such as consistency and training, is structured to ensure that the rating given by

the Peer Reviewer reflects the shared professional judgement of the panel of Peer Reviewers in that category of law.

2.31 The Peer Reviewer does not employ any specific formula to arrive at the rating. The fundamental nature of Peer Review is that it is the professional judgement of an experienced practitioner, and that judgement is essentially the shared view of the panel of Peer Reviewers. The Peer Review Criteria and Guidance, Quality Guides, methodology and framework enable Peer Reviewers to make a professional judgement on how they think the work of a Provider is managed, supervised and ultimately produced as a result of seeing the work in a category of law on the individual files. The Peer Reviewer's function is to assess the overall quality of work in the organisation from the random file sample. Peer Reviewers take into account the need for every Client to receive a competent service in their professional judgement of a firm's work. Peer Reviewers' ratings may be influenced by the extent and the causes of poorer work. Good work in some files will not necessarily balance poor work in others.

3. THE USES OF PEER REVIEW

3.1 Peer Review is the assessment tool used by the LAA to monitor the quality of Provider performance. A key part of the Peer Review Process and methodology is that Peer Reviewers are not informed as to the reason for the Peer Review. Furthermore, another key feature is the importance of ensuring that Peer Reviewers are exposed to a range of quality of Provider work.

Prioritising Assessments

3.2 Within limited Peer Review resources, these may include, but are not limited to:

- Contract Manager referrals when there are concerns about the quality of a Provider's work, a Peer Review may be used to identify whether the Provider is meeting the standard required by the Contract Standard Terms.
- Where a Provider has previously been in receipt of a confirmed Below Competence (4) rating or Failure in Performance (5) and subsequently this has later been followed by a second Peer Review as a Competence Threshold rating (3) or higher (1 or 2), the LAA may Peer Review the Provider again in 12 months (or earlier as considered appropriate) to ensure that a Competence Threshold (3) rating is maintained.
- Providers who do not currently have a recent Peer Review rating where there are no known quality concerns.

3.3 This exposes Peer Reviewers to a range of Provider work and also provides a controlled file sample against which the LAA can gauge normal performance. It also provides a random check on the quality of work of all Providers.

4. PEER REVIEW LOGISTICS

The Selection of Providers for Peer Review

- 4.1 Although the LAA retains the right to Peer Review a Provider at any time, and without specifying a reason there are a number of different reasons why a Provider may be selected for Peer Review (see section 3). Peer Reviewers are not informed of the reasons for the Peer Review, in order to maintain their impartiality.
- 4.2. Apart from prioritised Peer Reviews, Crime and Civil Providers are currently subject to a Peer Review every 3 - 5 years.

File Selection

- 4.3 The LAA commissioned research by Ministry of Justice statisticians to confirm the appropriate file sample size for a Peer Review. The research specifically concentrated on the number of files that require review in any Peer Review file sample to ensure confidence that the rating is an accurate reflection of the Provider's work.
- 4.4 The findings supported the current process of reviewing 12 files as this demonstrates a minimum confidence level of 97.5% that the rating of a Peer Review is an accurate reflection of the Provider's overall quality.
- 4.5 The file sample is generated by a randomisation tool, which has been developed in Excel. All the files selected will have been closed within at least the last 12 months, unless this period has been extended where a Provider has insufficient numbers of closed files.

File Sample

- 4.6 For a first Peer Review, 12 files are assessed from a random sample of 15 files. This includes 3 spare files in case some files may not be able to be reviewed. For example, but not an exhaustive list, a file may not be able to be reviewed because the file is part of a linked file which has not been produced or not all papers have been supplied by the Provider, resulting in the Peer Reviewer being unable to conduct the Peer Review. Similarly, if a matter has been reopened and subject to proceedings Providers will request the file to be returned. The file sample is drawn from a pool of all closed files which is based on the work a Provider reports in each matter type (for Civil cases) or claim and outcome codes (Crime cases)
- 4.7 The nature of work carried out by Providers will differ by type and volume, and not all Providers will carry out all matter types. In order that the file sample is an accurate reflection of the work done by the Provider, the LAA may liaise with the relevant Contract Manager or the Provider to discuss the type of work carried out in order to generate a pool of case files which is reflective of the type of work carried out by that Provider, from which the file sample is drawn. **Any discussion must take place before a Provider submits files for Peer Review.**

Once files have been submitted it is deemed that the Provider accepts that the files are acceptable for Peer Review.

- 4.8 The LAA can only Peer Review closed files that appear within the randomisation tool and Providers cannot offer or select their own files.
- 4.9 The stratification of the file sample for a second Peer Review, following a confirmed Below Competence (4) or Failure in Performance (5) rating at a first Peer Review, may differ from the file sample in the first Peer Review due to the availability of closed files and more details can be found at paragraph 5.41.
- 4.10 When a file forms part of the file sample, then the entire case (at all levels of legally aided funding) must be submitted for Peer Review. Where work subsequent to Legal Help is continuing or has been privately funded, the Provider should report to the LAA that this is the case.
- 4.11 Providers must immediately contact the Peer Review team if any of the files which form part of the file sample are unavailable. In this instance, Providers must not commence work on the file list until they have received a reply from the Peer Review team as a new file list may have to be randomly generated. Providers are not allowed to substitute files on the file list. If a file is unavailable, for example it is at the costs draftsman or for some reason it has become live, a replacement file or files is selected using the randomisation tool. The LAA reserves the right to request the file again at a later date if it is required.
- 4.12 Providers must notify the Peer Review team and their Contract Manager if the file list does not represent the Legal Aid work that they have completed.
- 4.13 If a Provider is unable to submit two or more files as part of the Peer Review file sample, the matter will be investigated by the LAA. If the reason for the non-submission of files is reasonable, a completely new file sample may be selected. This is to ensure that the Peer Review file sample remains random. If the reason for the non-submission of files is unreasonable or no reason is given, the LAA may take appropriate action, for example, imposing a Contract Sanction.
- 4.14 Providers are also asked to submit any files linked, including standard leaflets/information sheets and Prosecution Papers to those requested on the file sample list. Linked files should include all stages of work up to and beyond the case stage requested. If the linked file is live then the Provider should send in a photocopy of the file up to the work carried out on the substantive file. Linked files assist Peer Reviewers to understand and appreciate the full extent of work carried out on behalf of the Client. If linked files are not submitted, Peer Reviewers will exercise their professional judgement on what has been submitted or whether the Peer Review of a file can be appropriately conducted in the absence of these associated or linked files.

4.15 Some files may form part of the file sample but are not suitable for Peer Review, for example, files where there has been a change of solicitor prior to completion of any stage.

4.16 In order to maintain the integrity of the randomisation of the file sample, Peer Reviewers review files from the top of the file list down.

Crime File Samples

4.17 The file sample for a Crime Peer Review will consist of the following randomly selected files:

- Four Crown Court files (where available) of which the Peer Reviewer will normally assess at least three during the Peer Review.
- A maximum of two police-station-only files.
- Five Not Guilty pleas.
- Four Non-Standard Fees.

4.18 The Peer Reviewer will usually then review 3 Crown Court, 2 police station, 4 Not Guilty and 3 Non-Standard fees (even if these overlap into other file types) from top to bottom of the file list. This usually leaves the Peer Reviewer with 3 spare files, 1 Crown Court, 1 Not Guilty and 1 Non-Standard fee if they are unable to review any of the first 12 files. However, the file sample is based on the proportion of work a Provider actually reports in each matter type, see paragraph 4.7.

Civil File Samples

4.19 A file sample for a Civil Peer Review will consist of the following randomly selected files:

- Certificated files
- Controlled work

However, the file sample is based on the proportion of work a Provider actually reports in each matter type, see paragraph 4.7.

Family File Samples

4.20 Due to the scope and complexity of the category, a file sample for Family work will be selected, according to the work proportion of the Provider, from the following case types

- Domestic Violence
- Children Act cases
- Other work

Normally no more than five files in any Family file sample will have involved less than two hours work.

Immigration & Asylum File Samples

4.21 Due to the scope and complexity of the category, a file sample for Immigration & Asylum work will be selected according to the work proportion of the Provider from the following case types

- Initial Asylum claims
- Asylum appeals
- Asylum legal help work with minors
- Trafficking

File Requests

4.22 The LAA has the right to request files for Peer Review, including for training, under the Contract. The Contract requires that case files for any assessment should be provided promptly and within such time period as the LAA may reasonably specify. Failure to submit files may lead to the application of Contract Sanctions.

Conflict of Interest

4.23 Checks are carried out with Providers and Peer Reviewers that there are no conflicts of interest before a specific Peer Reviewer is allocated for a Peer Review.

4.24 Conflicts, for the purpose of Peer Review, include situations where there has been the opportunity for the Peer Reviewer to have their view of a Provider affected or biased in some way. For example, circumstances where the Peer Reviewer;

- has a partner, or a member of their immediate family, or close friend that works or has previously worked in a Provider/organisation that is scheduled for Peer Review;
- has previously worked for the Provider;
- has recently acted against the Provider;
- has had recent dealings with the Provider, for example as an agent, acting for a co-accused, or acting for a private prosecutor;
- has recently taken over a number of matters from the Provider; and
- has another issue, which might reasonably appear to affect their view of the organisation to be Peer Reviewed.

4.25 Conflict checks also consider whether the organisations being Peer Reviewed are in direct competition with the Peer Reviewers themselves. A Peer Reviewer will not normally Peer Review any Provider within their geographic region unless both the Provider and the Peer Reviewer consent. It is a Peer Reviewer's duty to ensure that any possible conflicts of interest are identified at an early stage and reported to the LAA as soon as they arise.

4.26 The Provider is sent a list of all Peer Reviewers in a particular category and their current place of work and asked to record any relevant conflicts on a conflict-check pro forma and return this to the LAA within a specified period of 2 weeks. The Provider must specifically indicate why there is a conflict against any Peer Reviewer in accordance with

paragraph 4.24 (or specify another form of conflict). In such instances we may seek further verification of such conflicts. Where an actual conflict of interest is identified by a Provider or Peer Reviewer, that Peer Reviewer will not review the Provider's files. If a Provider fails to complete the conflict of interest form in the specified time of 2 weeks, the LAA reserves the right to allocate any Peer Reviewer from the panel.

Allocation of Peer Reviews to Peer Reviewers

- 4.27 Peer Reviewers are able to undertake any Peer Review within their category of law. Therefore, after checking conflicts of interest and availability, Peer Reviews are randomly allocated to Peer Reviewers within their category of law.
- 4.28 For some Family, Mental Health and Crime Peer Reviews it may be necessary to allocate reviews to Peer Reviewers who are specialists in a particular aspect of those areas of work.

Location of Peer Reviews

- 4.29 The majority of Peer Reviews are carried out at the Peer Reviewer's place of work or home. Peer Reviews at LAA premises will be authorised only on a case by case basis.

5. THE PEER REVIEW PROCESS

5.1 The Peer Review process is as follows:

- First Peer Review (instigated as set out in Section 3 above)
- Where a first Peer Review rating of 'Below Competence' (4) is confirmed as a result of any Provider representations being considered and the rating being upheld, see paragraph 5.25, this is a breach of the Contract. The breach of the Contract may result in the application of Sanctions by the LAA pursuant to the Contract terms. A second Peer Review will usually be undertaken, unless otherwise agreed, 6 months after the date that the first Peer Review rating is confirmed.
- Where a first Peer Review rating of 'Failure in Performance' (5) is confirmed as a result of any Provider representations being considered and the rating being upheld, see paragraph 5.25, this is a breach of Contract. The breach of the Contract may result in the application of Sanctions by the LAA pursuant to the Contract terms. After a first or second Peer Review, Providers have the right to make representations where the unconfirmed Peer Review rating is 'Below Competence' (4) or 'Failure in Performance' (5), provided that representations are made within 28 calendar days of the LAA's confirmation that the Provider has received their files back along with the unconfirmed Peer Review report and rating. If representations are made and after consideration the unconfirmed rating is upheld, or where representations are not made, the Peer Review rating is confirmed on the date the LAA gives notice to the Provider of the same (i.e. the date of the letter sent by the LAA).

5.2 The LAA reserves the right to copy (and store) all files submitted for Peer Review by the Provider.

5.3 Providers are asked only to submit completed files. The original files submitted for Peer Review should be and are deemed to be a complete record of each case. As such files requested for Peer Review must not be subsequently reviewed and amended between being requested and submitted.

5.4 Where, during the course of a Peer Review, a Peer Reviewer identifies any adverse issue relating to the professional conduct of a solicitor, including both ethical issues and/or the possibility of fraudulent behaviour, it will be reported to LAA Counter Fraud & Investigation. Additionally, it should be noted that the LAA would take seriously any attempt to fraudulently change the content of files in order to affect the outcome of a Peer Review or of representations.

First Peer Review

5.5 Providers receive a category-specific Peer Review on a random file sample of their files, see paragraph 4.6. A Peer Review, including completing the Peer Review report is expected to take the Peer Reviewer up to 14 hours. This is an estimation of the time taken to

complete a Peer Review, and some Peer Reviews that may take longer are referred by the Peer Reviewer to the LAA as soon as this is realised and the additional time required is considered and agreed on a case by case basis.

- 5.6 Peer Reviewers are provided with the file sample list of files for Peer Review, either hard copies or electronic files. The Peer Reviewer works from the top of the file sample list down to maintain the integrity of the randomisation. If a file is not reviewed the reason for this is noted.
- 5.7 Each file is assessed against the Peer Review Criteria and Guidance, copies of which are in Appendix 1 and the Quality Guides which can be found on <https://www.gov.uk/guidance/legal-aid-agency-audits>. The Peer Review Criteria and Guidance and Quality Guides provide a framework against which the Peer Reviewer evaluates the quality of the legal work in gaining information from the Client and other sources, the advice given based on that information and the work and steps taken following that advice. The Quality Guides provide a resource for the Peer Reviewer to use in assessing the work of the Provider and can also be used by referring to the Quality Guide in writing the Peer Review Report. The Quality Guides also give Providers further information to assist in producing an acceptable standard of work.

Peer Review Report

- 5.8 Following consideration of the files against the Peer Review Criteria and Guidance and the Quality Guides, the Peer Reviewer produces a Peer Review Report, which details the findings of the assessment. The Peer Review Report is detailed and contains appropriate examples from the files to support and substantiate the rating given.
- 5.9 The Peer Review report may, but is not required to, contain such sub-headings as follows:
 - The review.
 - Positive findings.
 - Areas for development.
 - Major areas of concern.
 - Other areas of concern.
 - Further comments.
 - Suggested areas for improvement.
 - Overall quality of work score.

A copy of the 'Peer Review Report' template is contained in Appendix 2.

- 5.10 "The review" section describes the review that was undertaken. It reports the subject category reviewed, when the review took place, the name or Reference Number of the Provider reviewed, the timespan of the review and the files that were considered in the review. The Unique File Number (UFN) and any sub-classification of each file will also normally be

given. This information clarifies to all concerned which files have been considered and the time taken over the review.

- 5.11 The “Positive findings” section contains examples of good practice or good performance. Where Peer Review has been rated as Excellence (1), Competence Plus (2) or Threshold Competence (3), the examples will demonstrate that the work reaches the level of performance required under the current Contract (or above that level).
- 5.12 A Peer Review that rates the level of performance as Excellence (1) or Competence Plus (2) is unlikely to have many “major areas of concern” and therefore any issues on the files are more likely to be noted in the Peer Review report as ‘areas for development’.
- 5.13 Major areas of concern are concerns that most influence the overall rating and may take the rating below the level of Competence. Peer Reviewers are looking for advice and work to be recorded and confirmed in a permanent form which would allow the Client to understand what is happening and another caseworker to pick up a file when necessary and understand what has happened and what is intended. Major areas of concern often occur where the detail or quality of advice recorded is wrong or insufficient in the circumstances, where the competence or work of the fee earner is poor or insufficient in the circumstances, or where the level of Client care given is insufficient in the circumstances. The following are examples of major areas of concern which Peer Reviewers have identified:
- **Knowledge of the law and procedures** – Serious prejudice may result from lack of knowledge or proper understanding of the law. The files should show a good knowledge of the law and an ability to manage the law. Good knowledge of the law should include not only knowledge of what the law is, but also knowledge of procedures that need to be followed. If there is a defect in either, then that could be deemed likely to cause serious prejudice to the Client.
 - **Advice** – The advice should always be recorded and confirmed in a permanent form. It should be clear and concise and easily understood by the Client. It should be tailored to the Client’s case and the Client’s needs. It is likely to be viewed that the advice is inadequate if couched in terms that the Client is unable to understand, because the Client will not be able to make a reasoned judgement either on the manner in which the case is being conducted or on decisions that the Client needs to make for the case to proceed.
 - **Lack of advice** – Lack of advice when needed or requested, for example a Provider not attending at police stations to give advice when it should, or a Client not given a sufficiently full or appropriate explanation or being misled with regard to either the merits of their case or the course that the case is taking. This may be deemed as serious an issue as giving bad advice.

- **Provider Management issues** – insufficient supervision of junior staff, inadequate training of staff, inappropriate allocation of work among staff at different levels, general problems of late communication to Clients, Court or others, missing deadlines, ignoring Counsels’ opinions on requests for action and other problems of poor management of work may all be deemed as serious issues if they have an effect, or could have an effect, on Clients.
- **The mentally ill and vulnerable** – Mentally ill and vulnerable Clients generally need specific consideration. Failings with regard to mentally ill or vulnerable defendants are likely to be a major area of concern. Failure to attend to them or to respond to their specific needs should always be considered to be serious.
- **Missing court appearances** – If the Client has been prejudiced at all or if a conviction or sentence occurred in their absence, without appropriate explanation, this would be serious.
- **Conflicts of interest** – It would be a major concern if a Provider acted in circumstances that would constitute a conflict of interest within the meaning of the SRA Code of Conduct currently in place. This would be so even if to act may be to the benefit of the Client.
- **Cost issues** – The focus of the Peer Review is on the quality of the Contract Work being undertaken and ensuring that Providers deliver Contract Work in accordance with the Contract. Where costs issues e.g. overcharging, are identified which impact the adequacy of the Contract Work and/or breach the Contract and/or breach a Provider’s professional obligations, the Peer Reviewer will take this into account and report issues to the SRA (or otherwise), as appropriate. In addition, relevant matters will be reported by the Peer Review team to the LAA Counter Fraud and Intelligence team.

5.14 “Other areas of concern” are those that are less likely to be of immediate impact on the Client and do not have a major impact on the rating.

Examples include:

- Advice is not as comprehensive or clear as it ought to be.
- Insufficiently recorded or communicated advice or work.
- Clients are not sufficiently kept informed of everything that will happen in advance.

- The file is not adequate for another fee earner to take up and work with.
- Not following standard procedure and poor file management.⁷
- Not performing administrative functions as far as the file is concerned, which may not prejudice the Client.
- Inappropriate language within the course of the file, although this may become serious if it has the effect of misleading the Client.
- Lack of internal file review or proper supervision, but which has not prejudiced this Client.

5.15 The 'Further Comments' section will be used for comments that do not warrant a mention in the earlier sections, but which are matters the Peer Reviewer wishes to draw to the attention of the Provider. These might include matters such as:

- Standard letters could have been used to inform Clients when an application for public funding has been sent to the LAA.
- The Provider would benefit from undertaking regular checks to ensure that all legal help forms are fully completed.
- Other matters of advice to the Provider relating to, for example, contractual issues.

5.16 The aim of the section regarding "suggested areas for improvement" is to bring together for the Provider such themes as instances of poor legal knowledge, poor action, inaction, delay or incorrect or incomplete advice in the Peer Review Report and suggest how these might be improved. It is not intended to direct how the Provider must put this right, though the Peer Review Report could indicate what approaches might be considered. Providers should decide for themselves how best to implement corrective action procedures/processes to ensure that they are appropriate for their organisation. However, corrective action is often based around one or more of the following:

- Supervision
- Internal File reviews
- Training
- Appropriate appointment of staff to specific work
- Proper use of standard letters
- Comprehensive advice
- Tailored advice
- Adequate and appropriate recording of advice and work
- Timeliness in advising or acting on the Client's case

5.17 The Peer Reviewer will write a specific comment if they feel the Provider could benefit from including or doing more of the above. It is expected that all Peer Reviews that rate the level of performance as Threshold Competence (3) or Below Competence (4) will require some form of improvement identified in the Peer Review Report. Providers rated

⁷ If a file is so poorly managed that another fee earner would be unable to take the case over, this concern would probably be placed in the major areas of concern.

Competence Plus (2) or above may have the opportunity to take into consideration comments listed under 'areas for development'.

- 5.18 A rating (1–5) is given for **overall quality of advice/work** Peer Reviewed based on the professional judgement of the Peer Reviewer after reviewing the files in the sample.
- 5.19 The Peer Review Report is intended as a reasoned document that explains and justifies a particular rating for the overall quality of the Provider's work and is appropriately detailed. Peer Review reports for Providers that have been rated Below Competence (4) and Failure in Performance (5) tend to be more detailed than for those where an Excellence (1) or Competence Plus (2) rating is achieved. A Provider should be able to understand from the Peer Review Report why a particular matter is considered by the Peer Reviewer to be an area of concern, so that they are able to implement remedial measures. Similarly, the Provider should be able clearly to understand from the Peer Review Report why they have achieved their particular rating and not a higher or lower one. The Peer Review Report should, where necessary, also enable the Provider to understand how their rating could be improved.
- 5.20 The narrative of the Peer Review Report should be specific enough for the Provider to understand exactly what is being mentioned both in terms of positive comments and areas of concern. The Peer Review Report should show what is considered to be good work. Areas of concern should be expressed to enable the Provider, where appropriate, to improve its practice in the future. Overall, it should be clear from the Peer Review Report:
- What the findings are.
 - Why a particular rating has been awarded.

On Receipt of the Peer Review Report

- 5.21 On receipt of the Peer Review Report, to minimise the risk to existing Clients, and irrespective of any representations to be made, it is recommended that the Provider undertakes a file review of all open cases, and subsequent new files, to ensure that the areas for improvement identified in the Peer Review report are considered, identified and acted on as quickly as is reasonably possible. Files selected for a second Peer Review are randomly selected from files opened and closed after the first Peer Review rating has been confirmed.

Senior Peer Reviewers

- 5.22 Senior Peer Reviewers strengthen the representations process, by assisting in validating Peer Review Reports and contributing to the training and mentoring of Peer Reviewers.
- 5.23 The role of the Senior Peer Reviewer is to validate Peer Review reports and consider any representations when required. They may apply for the

role of a Senior Peer Reviewer once they have conducted 20 Peer Reviews. Applications for Senior Peer Reviewers can be submitted during the term of their Contract

- 5.24 Senior Peer Reviewers are trained and monitored by the Independent Consultant. Training includes the process for validating peer review reports and working with Peer Reviewers to resolve representations.

Representation Process

- 5.25 Upon receipt of an unconfirmed Peer Review rating of 'Below Competence' (4) or 'Failure in Performance' (5), the Provider may make representations.
- 5.26 The Peer Review criteria sheet (redacted) is automatically sent out with Peer Review reports for all unconfirmed Peer Review ratings of 'Below Competence' (4) and 'Failure in Performance' (5) that are yet to be confirmed following consideration of any Provider representations.
- 5.27 Peer Reviewers are required to use the Peer Review criteria sheet, which forms part of the Peer Review Criteria & Guidance in Appendix 1, as they go through file samples to assess the overall quality of the legal work. The completed Peer Review criteria sheet informs the Peer Reviewer's Report and overall rating. It is intended to ensure that each Peer Review in each category is carried out considering the same criteria. It is not intended to show the development of the Peer Reviewer's professional judgement of overall quality as this is reflected in the Report and the overall rating.
- 5.28 The Peer Reviewer will not automatically arrive at the rating simply by averaging scores on individual files and uses their own experience and professional judgement to consider the overall performance of a Provider, taking into account that all Clients deserve a competent service.
- 5.29 There is no right to seek representations for ratings of 'Threshold Competence' (3), 'Competence Plus' (2) or 'Excellence' (1).
- 5.30 Representations **must** be made in writing using the Representations Pro Forma (REPB1) at Appendix 3 and **must** reach the LAA within 28 (calendar) days following the LAA's confirmation that's the Provider has received their files back along with the unconfirmed rating and the Peer Review Report
- 5.31 The LAA will arrange for the representations to be considered by the Peer Reviewer who conducted the original Peer Review and a Senior Peer Reviewer. The Senior Peer Reviewer's participation in the representations process is to ensure that all the representations are fully and properly considered.

- 5.32 Where it is not possible to involve a Senior Peer Reviewer in the representations process⁸, the representations will be considered by the Peer Reviewer who conducted the Peer Review together with a second Peer Review panel member.
- 5.33 Representations cannot be considered unless the original file sample (**in its original form as previously submitted**) is submitted with the representations form.
- 5.34 The Peer Reviewer will consider the representations made and if there are any which they do not accept, they will discuss these with the Senior Peer Reviewer (or second Peer Reviewer), and together they will decide whether, in light of the comments made by the Provider, any amendments should be made to the Peer Review Report and if the rating should be changed.
- 5.35 The Peer Reviewer and Senior Peer Reviewer (or second Peer Reviewer) prepare a final Peer Review Report, which includes any amendments to the Peer Review Report and their response to representations, with one of possible outcomes:
- The original rating is upheld.
 - The original rating is revised.
- 5.36 After representations have been considered (or none submitted within the deadline in paragraph 5.30) the Peer Review Report will be independently validated by the Independent Consultants or a further Senior Peer Reviewer to ensure that the correct process has been followed and that the Peer Reviewer and Senior Peer Reviewer have properly considered and addressed any representations made. The Peer Review rating is then confirmed on the date the final Peer Review Report is sent out or in the case where no representations are made, the date the Contract Notice is sent out. Further representations at this stage cannot be made.
- 5.37 The confirmed Peer Review Report and rating is sent to the Provider normally within 35 days of receipt of any representations and the return of relevant files from the Provider.
- 5.38 If a Provider does not make representations within 28 calendar days (or such longer periods as may be agreed with the Peer Review team) from confirmation of the unconfirmed Peer Review report and rating, they are thereby deemed to accept the decision and lose the right to dispute it. Reasonable requests from Providers for extensions exceeding 28 calendar days from receipt of unconfirmed Peer Review Report and rating will be considered on an individual basis, provided they are made within the original 28 calendar day period.

⁸ For example, where all Senior Peer Reviewers on a particular Peer Review panel have a conflict of interest with the Provider or where the panel does not have any available Senior Peer Reviewers.

Second Peer Review

5.39 A second Peer Review is scheduled in the following circumstances:

- Where the work of the Provider received a confirmed rating of Below Competence (4) in a first Peer Review, the second Peer Review will normally, unless otherwise agreed, be scheduled after six months from the date that the first Peer Review was confirmed. However, the LAA reserves the right to Peer Review files earlier than 6 months.
- Where the work of the Provider received a confirmed rating of Failure in Performance (5) in a first Peer Review, a second Peer Review may be scheduled as a Sanction by the LAA pursuant to the Contract terms, within an agreed timescale from the date the first Peer Review was confirmed. However, the LAA reserves the right to Peer Review files earlier than 6 months.

5.40 If a second Peer Review is required it will be conducted on a new random file sample and conducted by a different Peer Reviewer, who will be unaware of the reason for the Peer Review. The process followed is the same as that for a first Peer Review.

5.41 At the second Peer Review following a confirmed 'Below Competence' (4) or 'Failure in Performance' (5) rating (confirmed following consideration of any Provider representations), the LAA will select a new file sample from files that were opened and closed on or after the date that the first Peer Review rating was confirmed. However, it is likely that in some areas of law, there may be insufficient files to constitute a new representative file sample. In such cases, the LAA may allow an extended improvement period of an additional 3 months. If a representative file sample is not available following the improvement period, the file sample for the second Peer Review will be taken from **any** files opened and closed on or after the date that the first Peer Review rating was confirmed.

5.42 If the Provider makes representations following a second Peer Review where this results in a rating of 'Below Competence' (4) or 'Failure in Performance' (5), the representations will normally be considered by a different Senior Peer Reviewer /Peer Reviewer who was not involved in the first Peer Review. However, this may not always be possible in circumstances where the panel is limited and there are multiple conflicts of interest. Senior Peer Reviewers or Independent Consultants, validate decisions, to ensure that the process has been followed correctly. They do not see the files, nor the Providers details, and can be used on both first and second Peer Reviews. The representations process described in paragraphs 5.25 to 5.38 will be followed to confirm the rating for the second Peer Review.

Providers paying for Peer Reviews

5.43 Where a Provider receives a confirmed rating of 'Below Competence' (4) or 'Failure in Performance' (5) in a first or second Peer Review (confirmed following consideration of any Provider representations), the Provider must reimburse the LAA the standard costs of the Peer Reviews, as per the Contract Standard Terms.

6. PEER REVIEW OUTCOMES AND REPORTING

Feedback to Providers from the Peer Review Report

- 6.1 All Providers receive written feedback, in the form of the Peer Review Report, on the outcome of their Peer Review. The Peer Review report is sent directly to the Provider where a rating of Excellence (1) or Competence Plus (2) is received. 20% of the Peer Review Reports which receive a rating of Threshold Competence (3), are submitted to be validated by a Senior Peer Reviewer or Independent Consultant to assure the level of assessment and Peer Review Report writing.
- 6.2 The Independent Consultant or the Senior Peer Reviewer considers the Peer Review Report and checks that the Independent Peer Review Process and methodology have been followed correctly and that the comments made are reflective of the rating that the Peer Reviewer has given the Provider.
- 6.3 Where the Independent Consultant or a Senior Peer Reviewer considers there to be a concern regarding the outcome of a Peer Review, for example if the comments made do not support the unconfirmed rating, or a particular Peer Reviewer appears to have been awarding a different rating from their peers, the Independent Consultant will investigate and resolve the matter before the Peer Review report is fed back to the Provider.
- 6.4 Investigations by the Independent Consultant may involve discussing the matter with the Peer Reviewer and/or the request of further information regarding the Peer Review or the Peer Reviewer's previous ratings. If, following investigation, concerns still exist, a separate Peer Review may be requested.
- 6.5 The Independent Consultant also monitors and analyses data from Peer Review, including the range of Peer Review ratings each Peer Reviewer awards in comparison to other panel members and involves such data in further training exercises.

Outcomes

- 6.6 Following completion of the Peer Review process, and after any Provider representations have been considered, the rating will be confirmed. The confirmed rating of the Peer Review will be utilised by the LAA as an accurate reflection of the competence of the Provider, as per the Contract Standard Terms.
- 6.7 Full descriptions of all the ratings can be found in Appendix 1. Further information on how the ratings are dealt with is provided below:

Excellence (1) and Competence Plus (2)

- 6.8 A rating of Excellence (1) or Competence Plus (2) indicates that the Provider is conducting work to a high degree of competence. The rating is recorded and will normally be valid for three years, provided that there are no significant changes to personnel (especially the category supervisor), or the Provider's quality profile does not indicate a possible reduction in performance.

Threshold Competence (3)

- 6.9 A rating of Threshold Competence (3) indicates that, although the quality of work that is delivered is competent, there will be some areas of concern regarding the quality of advice and legal work, which need to be addressed. The Peer Review identifies potential areas for development.

Below Competence (4)

- 6.10 A confirmed rating of 'Below Competence' (4) (confirmed following consideration of any Provider representations) indicates that a Provider's work is being conducted at a standard below that which a Client is reasonably entitled to expect from a competent solicitor and is in breach of the Contract. The breach of the Contract may result in the application of Sanctions by the LAA pursuant to the Contract.

Failure in Performance (5)

- 6.11 A confirmed rating of 'Failure in Performance' (5) indicates that the Provider is conducting Contract Work at a standard that is significantly below that which a Client is reasonably entitled to expect from a competent solicitor and substantially below that required by the Contract Standard Terms and is a breach of Contract. The breach of Contract may result in the application of Sanctions by the LAA pursuant to the Contract terms. This could include termination of the Provider's Contract in the relevant category of law or the entire Contract however, this will be dependent on the Provider's particular circumstances and each case will be examined individually.

Outcomes of a first Peer Review

- 6.12 In the case of a confirmed Below Competence (4) rating on a first Peer Review, this is a material breach of the Contract. The breach of the Contract may result in the application of Sanctions by the LAA pursuant to the Contract terms. A second Peer Review will usually be undertaken, unless otherwise agreed, 6 months after the date that the first Peer Review rating is confirmed
- 6.13 In the case of a confirmed 'Failure in Performance' (5) rating on a first Peer Review, this is a material breach of Contract. The breach of the Contract may result in the application of Sanctions by the LAA pursuant

to the Contract terms. A second Peer Review will usually be undertaken, unless otherwise agreed, within 6 months from the date that the first Peer Review rating is confirmed

Outcomes of a second Peer Review

- 6.14 If the second Peer Review results in a confirmed rating of 'Below Competence' (4) or 'Failure in Performance' (5), this is a Fundamental breach of Contract. The breach of the Contract may result in the application of Sanctions by the LAA pursuant to the Contract terms.
- 6.15 In the event of a Sanction as a result of Peer Review, Providers have the right to appeal as set out in the Contract Standard Terms. Requests for an Informal Reconsideration must be sent to the Contract Manager in the first instance and requests for a Formal Review must be sent direct to the LAA Chief Executive.
- 6.16 LAA staff will not be able to explain, justify or alter any comments that appear on a Peer Review Report, as the Peer Review Report and the rating decision is an independent assessment, written by the Peer Reviewer.

Publication of Peer Review Results

- 6.17 The LAA has committed to publication of confirmed Peer Review ratings on the Government website which is regularly updated.

APPENDIX 1

Peer Review Criteria and Guidance

Peer Review Criteria – Civil

A. Communication with the Client:

1. How well does the adviser appear to have understood the Client's problem?
2. How effective were the adviser's communication and Client-handling skills?
3. How effective were the adviser's fact- and information-gathering skills?
4. How effectively was the Client informed of:
 - a) The merits (or not) of the claim? and
 - b) All developments?

B. The Advice:

1. How legally correct was the advice given?
2. How appropriate was the advice to the Client's instructions?
3. How comprehensive was the advice? (For Family, see over.)
4. Was the advice given in time/at the right time?

C. The Work/Assistance:

1. If no other work was carried out, was this appropriate?
2. If any further fact-finding work was carried out:
 - a) How appropriate and
 - b) How efficiently executed was the work?
3. If any other work was carried out:
 - a) How appropriate was the work? and
 - b) How efficiently executed was the work?
4. How effective in working towards what the Client reasonably wanted/needed was any further work carried out?
5. If no disbursements were incurred was this appropriate?
6. How appropriate were any disbursements incurred?
7. Where this is necessary, did the adviser consider/advise on/act on an effective referral?
8. Throughout the file how effectively did the organisation use resources?
9. Did the adviser or their work in any way prejudice the Client?
If yes, provide details overleaf.

Overall mark

Family

B.3

- (a) How comprehensive was the advice in relation to divorce (if sampled)?
- (b) How comprehensive was the advice in relation to children?
- (c) How comprehensive was the advice in relation to ancillary relief (if sampled)?
- (d) How comprehensive was the advice in relation to injunction?
- (e) How comprehensive was the advice overall?

Civil Criteria – Notes for General Guidance

The criteria are marked either Yes/No or on a sliding scale of 1–5:
1 = Excellence; 2 = Competence Plus; 3 = Threshold Competence;
4 = Below Competence; 5 = Failure in Performance.
X = insufficient information to make a judgement
NA = not applicable

A. Communication with the Client

Understanding the problem includes identifying the issues.

The most effective way of assessing these issues from the file is to look for:

1. A clear note of all interviews, either in original form or as part of the letters sent to the Client confirming the instructions.
2. A clear record of all advice given, either on attendance notes or as part of the letters sent to the Client confirming instructions, or on a statement or in supporting documents.

If it is noted on the file that the Client has any particular communication problems (for example with language or literacy), it is appropriate to consider whether the chosen methods of communication were suited to the Client.

Any statement taken from a Client would need to show that the adviser had a good grasp of the Client's needs and problems, and that the Client had the opportunity to convey sufficient details, given the particular circumstances of the Client. A statement should be checked with the Client and an interpreter if needed.

B. The Advice

This section applies to the initial *and* subsequent advice and should include a clear explanation of the options open to the Client, and what immediate action needs to be taken, and by whom.

3. Comprehensiveness – This should include: consideration of whether the adviser identified issues other than the immediate presenting problem, possibly necessitating separate advice or referral elsewhere (overlap with C8; consideration of whether the adviser used a holistic approach and (if different) whether the adviser considered all the Client's problems, both legal and other, when formulating the advice.
4. Timing – This relates directly to the adviser's knowledge and understanding of procedure and its practical application.

C. The Work/Assistance

2. Refers to fact-finding work that has been carried out since the first interview.

2 & 3. Efficiently – Inherent in the definition of efficiency is promptness.

4. Effective –For example communications should be accurate, comprehensible and clear. In some cases, where no amount of letter-writing etc. will overcome the other side’s intransigence, the Peer Reviewer will need to consider whether the adviser adopted tactics that would be effective to achieve what the Client reasonably wanted/needed.

8. In considering this question, the Peer Reviewer should look at the chances of success of the case, and whether the case was a reasonable use of public funds, taking into account the importance of the issue to the Client.

Specialist Subject Criteria – Notes for Guidance

In addition to these Notes Peer Reviewers will look to the Quality Guides for each Category for more detailed, specific information.

Housing:

The following should inform the Peer Reviewer’s assessments when applying the general criteria:

1. There are significant geographical variations in the options that are available to the adviser and Client because of differing local policies and practices.
2. Whether the problem has been correctly identified. There is a great deal of overlap between Debt/Housing/Welfare Benefits/Immigration/Mental Health.

Immigration:

The following generic criteria should be amplified in immigration cases:

A3. Should include consideration of whether the adviser fully investigated the Client’s immigration history, status etc.

In terms of section A generally, there should be evidence on file that the adviser has ascertained how the Client and any dependants are being maintained and accommodated, and that the adviser has addressed, either by action or referral, any issues this raises.

C2 & 4. It would be appropriate for the adviser to take the necessary steps to obtain all relevant supporting documents.

Use of the correct forms by the adviser is of critical importance, and the Peer Reviewer should be alert to Home Office return of incorrect forms.

C5. In considering disbursements, you should consider whether an interpreter was instructed, if required. If so, was the interpreter appropriate in all the circumstances (for example linguistic ability and independence)?

C7. ‘Referral’ includes referring the Client to other helping organisations.

Mental health:

A2. Communication with Clients who are mentally disordered can be challenging. Advisers should be alert to any difficulties and demonstrate a willingness to build up an appropriate professional relationship.

C2 & 3. There should be a consideration of the validity of both the Client's detention and entitlement to a review.

C2 & 3. The Transaction Criteria are considered a useful tool in determining the usual steps in preparing a case. The adviser should consider what information gathering is required, such as an examination of medical records, interviewing potential witnesses, attending professional meetings such as managers' reviews, s117, and CPA meetings, or obtaining expert evidence.

C2 & 3. The adviser should demonstrate adequate preparation for a hearing, whether by use of a skeleton argument or notes of factual issues. The adequacy of the reasons for any decision should be considered.

Family:

C8. 'Referral' includes referring the Client to other helping organisations.

Crime Criteria – Notes for General Guidance

Client Name:

UFN:

Supplier/PDO name:

Fee Earner (where known)

PDO Area:

Case weight 1 2 3 4 5 (1 being the most complex/serious)

1 = excellent

2 = good

3 = threshold competence

4 = poor

5 = very poor

X = insufficient information to make a judgement

NA = not applicable

Lead charge:

Other Charge(s):

Claim code(s):

A. The file

1. How effective is the composition of the file?
2. How appropriate is the level of information recorded?
3. How appropriate was the management of the case?

B. Communication

1. How appropriate was communication:
 - (a) With the Client?
 - (b) With others (CPS, counsel, etc)?
2. How well was the Client informed of:
 - (a) The merits (or not) of their defence/case?
 - (b) All developments (including conclusion)
3. How timely was communication?

C. Information

1. How effectively was relevant information gathered:
 - (a) From the Client?
 - (b) From the police/prosecution?
 - (c) From others?

D. Advice

1. How good was advice:
 - (a) On Plea?
 - (b) Appeal?
 - (c) Generally?
2. How timely was advice? (e.g. early, late or appropriate)

E. Assistance

1. Was everything reasonably done to assist the Client?
If No, specify:
2. Where issues, (bail, venue, guilt, appeal etc...) were contested, were the outcomes achieved: (a) better than expected, (b) as expected, (c) worse than expected.
3. Overall, how effective was the work done in achieving the Client's reasonable) objectives?
4. Was the Client prejudiced in any way by the work done or not done?
(if Yes, please specify)

F. Efficiency

1. How efficiently was the work carried out?
2. Throughout the file, how effectively were resources used (including experts?)
3. Were any disbursements incurred appropriate?

G. Ethics and Standards

1. To what extent was the defence case conducted in accordance with the overriding objective?
2. Were Professional Standards of behaviour maintained in dealing with:
 - (a) The Client
 - (b) The Prosecutor
 - (c) The Court
 - (d) The LAA
 - (e) Others
3. Where ethical issues did arise, (e.g. potential conflicts of interest) were they properly addressed?

If No to any of the above, please specify.

Please state the following:

Claim Code:

Matter Type/Offence Code:

Outcome Code:

Overall mark

(a) At Investigation Stage	1	2	3	4	5	X	N/A
(b) At Magistrates Court Stage	1	2	3	4	5	X	N/A
(c) At Crown Court Stage	1	2	3	4	5	X	N/A

Overall File Score **1 2 3 4 5**

Please write any further comments below.

Peer Review of Criminal Files – Notes for Guidance

In addition to these Notes Peer Reviewers will look to the Quality Guide for Crime for more detailed, specific information.

General

In reviewing a file, a Peer Reviewer should look at the whole file (or files) and take into account work done (or not done) in respect of all relevant stages.

Some files may have been selected that are not suitable for Peer Review. These are:

- Files where there is insufficient content regarding the work of the Provider being Peer Reviewed, in the professional judgement of the Peer Reviewer.
- Files where there is insufficient information on the file to make an assessment (for example where linked files containing relevant information concerning the file in question are missing, or there has been a change of Provider so early in a stage that in the professional judgement of the Peer Reviewer there is insufficient content to review).

If a file comes under one of these two categories, do not review it, but note the reason on the form or computerised data system.

Fee earner (where known): If possible, note the name (or identity) of every person who has done significant work on the file. If the quality of the work differs significantly between different people who have worked on the file, make a brief explanatory narrative entry on the form or computerised data system.

Case complexity and case seriousness: Circle the most relevant categories.

'Seriousness' concerns both the nature of the alleged offence(s) and the circumstances of the alleged offender (for example they have relevant previous convictions, which are likely to make the penalty greater).

'Complexity/difficulty' relates to the circumstances of the alleged offence(s) (for example complex facts and/or evidence) and the circumstances of the alleged offender (for example mental disorder).

Seriousness and complexity should be judged by reference to the standards relevant to the trial court in which the case is finally dealt with. For example, if a case is committed to the Crown Court for trial, it should be judged by reference to the Crown Court, but if a case is committed to the Crown Court for sentence, it should be judged by reference to the magistrates' court.

Lead charge: Insert the most serious offence (if more than one).

Other charge(s): Insert all other offences (alleged if at the investigation stage, charged or summons, or on the indictment if at the court stage).

Claim code(s): Insert all relevant claim codes for work done on the file.

The File

1. If it appears that the file is not in the condition it would have been during the case (for example because it has been rearranged by a costs draftsman), leave blank.
2. The appropriate level of recorded information will depend upon a variety of factors such as the seriousness of the allegation(s), whether it is a clear guilty plea, etc.
3. Assessment of the management of the case will be based upon evidence in the file as to allocation, supervision, continuity, use of counsel, etc.

B. Communication

'Appropriate' means appropriate by reference to the person being communicated with.

1. This involves an overall assessment of communication and Client-handling skills as evidenced in the file.
2. Note that question D1 deals specifically with advice regarding appeal. This question (B2) is concerned with how well they were informed about merits/developments other than advice regarding appeal.

C. Information

1. This question is concerned with the actions taken (or not taken) in order to obtain relevant information from the Client. Thus, for example, the fact that there are little or no instructions on the file would not result in a low mark if it is apparent that the Provider took appropriate steps to obtain information but was not successful for reasons beyond their control.

D. Advice

1. The appropriateness of the advice on plea includes the timing of the advice. Question B2 is concerned specifically with the timing of advice to plead guilty (where relevant).

E. Assistance

1. This question is concerned with whether the Provider had done enough work on the case, having regard to seriousness, complexity, nature etc. of the case. If work was done that was not necessary, that should be assessed separately under F1 and/or F2.
2. This involves an assessment, in effect, of the skill with which the Provider sought to achieve the Client's reasonable objectives.
3. This is concerned with the 'value added' by the Provider in relation to bail, mode decision, etc. Is it apparent from the file that the work done by the Provider led to a result that was better than expected, as expected etc.?
4. A Yes assessment should only be given if it is clear from the file that the Client was, in fact, prejudiced.

F. Efficiency

1. In relation to the work that was done, was it timely, carried out expeditiously etc.?
2. This includes whether work was done that was not necessary, as well as whether the Provider made effective use of resources both within and outside the organisation, for example instructing agents for a distant court hearing, and whether this was appropriate, effective use of experts, counsel etc.

G. Ethics and Standards

1. This question is relevant where it is clear from the file that there was an ethical issue such as conflict of interests, Client confidentiality, duty to the court etc.
2. This involves an overall assessment of the three stages (as relevant) and should be based upon an overall impression of the standard of work done on the file, rather than a mechanical adding up of the scores given in respect of the other criteria.

Peer Review Report Template

**Legal Aid Agency
Peer Review Report Form**

Provider

Account No

Category

Date of Peer Review

The Review

Files Reviewed

Positive Findings

Major Areas of Concern/Areas for Development

Other Areas of Concern

Further Comments

Suggested Areas for Improvement

**Overall Assessment of the Quality of the Work on the files of the
Provider Peer Reviewed**

Appendix 3

REP1B FORM

Representations cannot be considered unless the original file sample (in its original form as previously submitted) is submitted with the representations.

Please complete and return to
PeerReviewRepresentations@justice.gov.uk

Provider's Name:

Account Number:

Category Peer Reviewed:

Date of Peer Review:

This form works best when submitted electronically. If you have a paper copy and would like an electronic copy, please email at PeerReviewRepresentations@justice.gov.uk

Please write any representations that you wish to make under the corresponding heading to which the comments appear on the Peer Review report.

Are you satisfied that the Peer Review process as set out in the process document was adhered to? Yes / No (If no, please comment below.)

The document can be found at the link below.

<http://www.justice.gov.uk/legal-aid/quality-assurance/audits/peer-review>

Major Areas of Concern

Other Areas of Concern / Further Comments

Suggested areas for Corrective Action

Do you feel the Peer Review Report assisted your Provider/organisation? Yes/ No
(Please provide details below).

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