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Agency

Independent Peer Review Process Document

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Contents

1	Introduction.....	4
2	Independent Peer Review Methodology	5
3	The Peer Reviewers.....	12
4	The uses of Peer Review	19
5	Peer Review Logistics	20
6	The peer review process.....	25
7	Peer Review outcomes and Reporting.....	322
	APPENDIX 1.....	37
	PEER REVIEW CRITERIA AND GUIDANCE.....	
	APPENDIX 2.....	46
	PEER REVIEWER PERSONAL SPECIFICATION.....	
	APPENDIX 3.....	487
	PEER REVIEW REPORT.....	
	APPENDIX 4.....	49
	PEER REVIEW REPRESENTATIONS PRO FORMA.....	

1 INTRODUCTION

- 1.1 The purpose of this document is to update the methodology for Independent Peer Review. Peer Review is a system in which a panel of independent experienced legal practitioners assesses the quality of work of other professionals against a set of criteria and levels of performance agreed with the professional community. The intention of Independent Peer Review, as described in this paper, is to enhance the standards of legal work carried out under public funding.
- 1.2 Peer Review is also used as an integral part of the Legal Aid Agency's (LAA) provider management strategy as a direct measure of the quality of advice and legal work of a provider. This paper is not intended to provide information on the LAA's wider provider management and contracting strategy which uses, but is separate from, the Independent Peer Review process.
- 1.3 The Independent Peer Review process has been developed from an existing methodology and built upon to reflect feedback from peer reviewers, providers and representative bodies such as the Law Society and LAPG.
- 1.4 Since 2005, the process has been used to conduct more than 4,500 peer reviews. This experience confirms the belief that Independent Peer Review process represents the best method available to measure the quality of advice and legal work of providers.
- 1.5 The practical application of the peer review process has helped to identify aspects of the process which needed further development. This paper incorporates these improvements to the peer review process, including:
 - Streamlined Peer Review Process
 - Remote Peer Reviews
 - Remote Representations
 - Reduction in Peer Review sample size
 - Charge to providers for Peer Review costs when scoring a "4 or 5"
 - Updating quality guides and reviewing results
- 1.6 The Independent Consultant mentioned in this paper is Professor Avrom Sherr who was previously based at the Institute of Advanced Legal Studies. Any other independent consultants involved in peer review work are approved, trained and supervised by Professor Sherr.

2 INDEPENDENT PEER REVIEW METHODOLOGY

Definition of Peer Review

- 2.1 The Independent Peer Review utilised by the Legal Aid Agency (LAA) operates within a framework and methodology developed and managed by a research and operations team originally based at the Institute of Advanced Legal Studies (IALS). Operation of the process continues under the aegis of the Independent Consultant.
- 2.2 'Peer review' in this context is a form of contract audit based on a review of a sample of a provider's case files in a category of law, undertaken by an experienced practitioner who is trained in the peer review framework. The entire process and the management by the Independent Consultant of areas such as consistency and training, ensures that the rating given by the reviewer is essentially the shared view of the entire panel of reviewers.
- 2.3 The framework involves the assessment of files using a standard criteria and ratings system to determine the quality of advice and legal work provided to clients in a particular category of work. Following consideration of the files using the criteria, an overall judgement on the quality of advice and legal work is made.
- 2.4 Peer reviews are category specific and are carried out by a practitioner who is experienced and skilled in that area of law.

Development and changes to Methodology

- 2.5 The peer review methodology utilised by the LAA was initially developed by the Independent Consultant with other researchers at IALS. The peer review process described in this paper represents the best mechanism available for assessing the quality of legal advice and work carried out by providers of legal aid.
- 2.6 Given the expected increase in crime Peer Reviews we have reviewed the current processes/methodology to ensure efficiency and effectiveness. A number of changes have been identified that will improve efficiency and flexibility in the Peer Review process to ensure we are able to meet the increase in demand.
- 2.7 The Peer Review process will be streamlined by
 - Removal of validation process for those awarded 1 or 2
 - Reduction in validation process for those awarded 3
 - Removal of prior validation prior to reps and the appeal process for those awarded 4

- 2.8 Where possible, peer reviews and representations will be processed remotely
- Allowing for Peer Reviewers to work from home or own offices to allow flexibility on undertaking reviews
 - Enabling Peer Reviewers to reduce time taken on Peer Reviews
- 2.9 Reduction in Peer Review sample size by
- Reducing sample sizes from 15 to 12 (ensuring an even split across different categories)
 - Based upon a statistical review by MOJ statisticians demonstrating no changes to overall scores for providers
- 2.10 Charge providers for Peer Review costs when scoring a 4 or 5
- Both Civil and Crime contracts include a provision for charging providers when they score a 4 or 5 (Below competence levels) after any representations.
 - Costs charged will be for direct Peer Review costs only (not LAA administration costs)
- 2.11 Updating quality guides and reviewing results
- Update all guides across crime and civil categories
 - Review and analyse previous Peer Review results from last 3 years to identify trends/outliers from high and low score Peer Reviews
 - Feedback results of best practise and areas of improvement to providers

Peer Review Criteria

- 2.12 The assessment of files for peer review is carried out using standard criteria (the Peer Review Criteria) and a rating system developed by the researchers in consultation with the peer reviewers and representatives of the Law Society (civil and crime criteria)¹ and the not-for-profit sector (civil criteria only)
- 2.13 The Peer Review Criteria are designed to highlight the quality of:
- The information gained from the client and other sources.
 - The advice given based on that information.
 - The steps taken following that advice.

¹ The crime peer review criteria were developed by Professor Ed Cape of the University of the West of England, together with the peer reviewers, consultees and other members of the research team.

- 2.14 There are two different sets of criteria: civil and crime. The civil criteria are used for the peer review of civil categories of law and the crime criteria are used for the peer review of criminal defence work.
- 2.15 The criteria for crime are specific to all areas of criminal law. There are further legal work and generic criteria, applicable to all areas of civil law, in conjunction with category-specific guidance notes for peer reviewers.
- 2.16 Following their assessment of the files using the criteria, the peer reviewer makes an overall judgement concerning the quality of advice and legal work provided by the provider in a category of law.

Civil Criteria

- 2.17 The civil criteria were developed as part of the Quality and Cost research mentioned above, drawing on earlier work. The criteria were then further refined and adapted in consultation with peer reviewers and other specialist practitioners. Category-specific criteria were developed to be incorporated into notes for guidance to elaborate the use of the criteria. A copy of the civil criteria and associated guidance is located in Appendix 1.

Crime Criteria

- 2.18 The criteria developed for crime were informed by a number of sources:
- **Investigative stage peer review criteria** – During the first phase of the Public Defender Service (PDS) evaluation research, criteria were created for peer review of police station files. These were developed using a number of sources, including the transaction criteria of the Legal Aid Agency (LAA) and the Standards of Performance that are used in the police station accreditation process 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.; 2nd edn; 2002) sets out guidance on standards of good practice for criminal defence lawyers.
 - **The civil peer review criteria** – The experience of using criteria in a civil setting influenced the development of crime criteria, particularly in terms of formulating criteria that are generic (in the sense of being applicable to a wide variety of cases and case trajectories) and which focus on the processes involved in conducting cases.

2.19 Using the sources in 2.18, the crime criteria 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 criteria and associated guidance is reproduced in Appendix 1.

Descriptions of the Ratings

2.20 The criteria are marked on a sliding (in research terminology “Likert”) scale (1–5), and, in some cases, with Yes/No. For each civil file peer reviewed, an overall assessment of quality is made with a 1–5 rating. For crime files, an overall rating of 1–5 is given for each stage of the case (Investigation Stage, Magistrates Court Stage and Crown Court Stage), followed by an overall assessment of quality for each file.

2.21 Following the review of a sample of files for a provider, an overall rating (using the 1-5 rating system) is given for the quality of legal advice and work.

2.22 The ratings are as follows:

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

2.23 The ratings provide an assessment of the work of providers as reviewed by the peer reviewer over a number of files.

2.24 Where a provider’s work is rated as Below Competence (4) or Failure in Performance (5), this indicates that the work falls below that required by the Standard Terms.

2.25 The descriptions of the ratings are as follows:

Excellence (1)

2.26 Indicators of Excellence in the standard of work include:

- 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)

2.27 Indicators of Competence Plus in the standard of work include:

- Clients' instructions are appropriately recorded.
- Advice and work is 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)

2.28 Threshold Competence is the standard that meets that required by the Standard Terms.

Indicators of Threshold Competence in the standard of work include:

- Clients' instructions are appropriately recorded.
- There is adequate but 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)

2.29 A peer review rating of Below Competence demonstrates that contract work has been conducted below the standard which clients are reasonably entitled to expect from a solicitor, and in breach of the Standard Terms.

Indicators of Below Competence in the standard of work include:

- Information is not being recorded or reported 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.
- There are lapses below the required standard.

Failure in Performance (5)

2.30 A peer review rating of Failure in Performance demonstrates that contract work has been conducted substantially below the standard which clients are reasonably entitled to expect from a solicitor and substantially below that required by the Standard Terms (a fundamental

breach as described in the contract). 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:

- Information is not being recorded or reported 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.
- There is a detrimental service to clients, or there is no meaningful service at all, or there is a service that leads to potential prejudice against the client.

Additional notes

2.31 The indicators set out in the ratings descriptions above are examples of the standard of work they describe. The indicators are not exhaustive. Peer reviewers may take other examples of good work or other causes of the failures in the work into account in order to determine the quality of advice and work evidenced by the peer review. For example, supervision and file review (required as part of the Specialist Quality Mark (SQM) or Lexcel) are designed to prevent the provision of poor quality of advice and legal work, as evidenced by a rating of Below Competence (4) or Failure in Performance (5). The award of a rating of Below Competence (4) or Failure in Performance (5) may suggest that supervision processes are not in effective operation.

2.32 The indicators outlined by the bullet points for each rating are indicative only. Each file is unlikely to evidence all the indicators and the peer reviewer is not restricted in the way he/she assesses the file. The indicators are provided to develop an understanding of each rating and how one rating differs from another. Peer reviewers are able to use the experience of running their own cases and supervising the cases of others to assess what is in a case file.

2.33 Ratings of Excellence (1), Competence Plus (2) and Threshold Competence (3) indicate that a provider is meeting or exceeding the requirements of the Standard Terms, whilst ratings of Below Competence (4) and Failure in Performance (5) breach the Contract.

Making a Judgement on Quality

2.34 Following the assessment of 12 files in a category of law, the peer reviewer prepares a quality assessment report. This report details all the key findings extracted from the individual files, with particular emphasis on trends and patterns identified across the sample. The peer reviewer will consider all the findings and all pertinent information, as evidenced from the files and will determine an overall rating, which is recorded on the final report.

- 2.35 The peer reviewer will not automatically arrive at the final rating simply by averaging the scores on the individual files, although in some instances the final rating is likely to be the equivalent of the average of the scores on those individual files. The essence of the peer review process is that reviewers use their skill, experience and training to inform the overall 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, ensures that the rating given by the reviewer is essentially the shared view of the entire panel of reviewers.
- 2.36 The peer reviewer does not employ any specific formula to arrive at the overall rating. The fundamental nature of peer review is that it is the judgement of an experienced practitioner. Again, it is important to emphasise that the rating given by the reviewer is essentially the shared view of the entire panel of reviewers. The peer review methodology and framework enables peer reviewers to make a 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. Their function is to assess the overall quality of work in the organisation from the sample of files. For example, no-one would wish any client to receive advice or legal work which is Below Competence (4) or a Failure in Performance (5). Peer reviewers' overall ratings may be influenced by the extent and the causes of poorer work.

3 THE PEER REVIEWERS

- 3.1 After the initial application process (which includes initial shortlisting) peer reviewers are carefully selected, trained and monitored by the LAA and Independent Consultant as an ongoing part of Independent Peer Review. A Peer Review Panel has been established in five categories of law². However, the categories of law that are subject to peer review will depend on which categories are in scope of legal aid at any given time. Peer reviewers are recruited, on a category of law basis, when required to expand or maintain the panels.
- 3.2 Appointment to the panel is through an open selection process, which includes advertisements in public legal journals. Applicants are only accepted onto the panel if they successfully meet all the requirements of the recruitment, training and assessment.
- 3.3 There may be occasions where individuals are invited to apply for the position of peer reviewer, for example in smaller categories of law where, following an open recruitment process positions are still vacant.
- 3.4 The practitioners on the peer review panels are drawn from a range of providers located across England and Wales. In order to prevent the panel being weighted towards the views or interests of one provider, selection of peer reviewers from providers will usually be restricted to one peer reviewer per office in each category of law. An office may, however, have peer reviewers in different categories of law.
- 3.5 As an exception to the provision above at paragraph 3.4, if the peer review panel of a particular category of law is large, two practitioners from the same office may be allowed to become peer reviewers on that panel.
- 3.6 Practitioners may become peer reviewers in two categories of law if they meet the requirements of recruitment and training in both categories of law, although this is unusual.

Recruitment

- 3.7 Standard application criteria are used during the shortlisting phase of the recruitment process. Applicants are expected to demonstrate:
 - Extensive experience of a wide range of cases within the specialist category of law in terms of case type and complexity.
 - At least 50% of working time to be spent working (carrying out, for example, casework, supervision and training) in the specialist category of law.
 - At least 1500 hours post qualification casework experience under the LAA contract in the specialist category of law.

² Crime, Family, Housing, Immigration, Mental Health.

- Experience of supervising a range of fee earners/caseworkers, preferably in a range of settings/workplaces in the specialist category of law.
- 3.8 Applicants must be working under an LAA contract in a fee earner/caseworker and supervisory capacity.³ Full details of the essential and preferred peer reviewer requirements are located in Appendix 2. Those shortlisted progress to the interview stage.
- 3.9 Shortlisted applicants are interviewed by the Independent Consultant (usually with a representative of the LAA in attendance whose role is to discuss practical issues, such as availability, with the applicant) and undertake a written exercise. In the written exercise, applicants are asked to assess a category-specific case file using the peer review criteria. The purpose of the interview is to assess applicants' experience, their motivation to become a peer reviewer, their understanding or consideration of concepts of competence, and their open-mindedness and independence. The purpose of the written exercise is to judge how well the applicant can carry out the review of the file.
- 3.10 The performance of applicants during the interview and the written exercise determines whether or not they can progress to the next stage of the recruitment – peer review assessment.
- 3.11 Applicants that have successfully passed the interview and assessment undergo a category-specific peer review of their own work. The review is conducted by an existing member of the peer review panel following the standard process. Applicants are only accepted onto the panel if their work is rated at a level of Competence Plus (2) or above.
- 3.12 References are sought for all applicants who are invited to the initial training. References must include a current/recent employer (or partner in the firm) and another senior referee. Invitations to the training are only offered subject to the receipt of satisfactory references. The names of potential peer reviewers and their current or most recent place of work are circulated to the Solicitors Regulation Authority to ensure that there are no particular issues with an applicant or their employer which might suggest that it would be undesirable for the applicant to be involved in peer review.

³ If a peer reviewer stops meeting the peer reviewers' personal specification they may continue as a peer reviewer for no longer than 12 months.

Initial Training

- 3.13 All applicants who have successfully passed the interview, written exercise and peer review of their own work must attend initial training. At the training the peer review process and its application are explained, and the applicants are trained on using the criteria, the ratings and feedback reports. Following this, the applicants undertake the assessment of example files in groups and individually. A number of existing peer reviewers assist in the training in a mentoring capacity. They provide guidance to the trainees regarding the assessment of files and the application of the criteria, utilising the knowledge and experience they have gained as a result of the reviews they have already conducted. The existing Peer Reviewers may also provide feedback that can be incorporated into the evaluation by the Independent Consultant of trainees' readiness to conduct reviews.
- 3.14 The trainees are introduced to the peer review process and how it has been developed. The criteria and associated guidance are discussed and explained in length.
- 3.15 Following the in-depth discussion of the criteria and how they should be applied, trainees are split into small groups for the assessment of example case files. In each group, everyone individually assesses the same files using the criteria. Once they have completed the review, group members discuss the file, the ratings they have given and the reasoning behind the ratings and then reach agreement on the rating the file should be given. This exercise is then repeated on other sets of example files. After the exercise has been conducted all the trainees reconvene to discuss how they have found the application of the criteria and clarify any areas of uncertainty together with existing peer reviewers.
- 3.16 Following completion of the example case files, the peer reviewers are introduced to the report form and spreadsheet used during the reviews. They are provided with detailed guidance notes to accompany the training.
- 3.17 Trainees also receive guidance on writing the Peer Review Report. Trainees are provided with examples of reports to inform them of their obligations in this area. The report is an important part of any review as it pulls together the quality findings on the case files, provides an overall assessment of the quality of advice provided, and forms the basis of the feedback given to providers following their review. Further detail about the content of the report is detailed in Section 6.
- 3.18 Trainees also receive training on security and equalities and diversity issues specifically related to peer review.

Verifying the Ability of Trainee Peer Reviewers

- 3.19 The first peer review conducted by a trainee peer reviewer is carried out on providers who have already been reviewed by experienced peer reviewers. This trial review is closely monitored in order to verify the ability of the reviewer to apply the criteria appropriately and award the ratings, and write reports in the appropriate style. Monitoring takes the form of crosschecking the trial review with the peer review conducted by an established member of the peer review panel.
- 3.20 If there is inconsistency between the outcomes of the review of the trainee peer reviewer and that of the established member of the peer review panel, the differences are investigated and resolved. The trainee peer reviewer has the opportunity of a discussion with the original peer reviewer. Further crosscheck peer reviews are conducted and, if necessary, the trainee peer reviewer may be asked to undergo further training.
- 3.21 If, following further training, the trainee peer reviewer's work continues to show inconsistency from that of other peer reviewers or the inability to write reports as expected, they will not progress onto membership of the peer review panel.
- 3.22 Where a peer review panel is being established in a new category of law, an iterative process of repetition and crosscheck of peer reviews is followed to help develop an agreed set of standards between the members of the peer review panel before they set out on the review of providers. The decisions made will be monitored closely. Any difference in the ratings will be investigated and, if necessary, a further peer review will be conducted. The ongoing performance of each new reviewer will be monitored.

Monitoring the performance of peer reviewers

- 3.23 Peer reviewers provide independent judgements on the quality of advice and work based on their own experience and influenced by their peer review training, which enables any individual peer reviewer to reflect the view of the panel. Peer reviewers are selected and trained to be open-minded towards different practice approaches, provided that these conform to appropriate standards of competence.⁴ Observer reliability is a well-recognised problem in relation to written work generally and professional work in particular and earlier work both in 'Quality and Cost' and 'Lawyers – The Quality Agenda'⁵ showed a tendency towards difference in the assessments of lawyer peers. Lawyers are trained in

⁴ The collective view of the Peer Reviewers, informed by their knowledge as experienced supervisors, panel membership, existing protocols and case law, facilitated by the Independent Consultant.

⁵ 'Lawyers – The Quality Agenda', Volume One, 'Assessing and Developing Competence and Quality in Legal Aid –The Report of the Birmingham Franchising Pilot' (Sherr, A.H. with Paterson, A. and Moorhead, R.; HMSO; London; 1994).

practice contexts, which are highly individualised, and there have been, until this approach of peer review was initiated, few standardised practice routines. The Legal Practice Course (LPC), since its inception in 1990, tends towards an element of standardisation for those who have been qualified through that medium. However, there are many practitioners who qualified earlier and there is some variance between LPC providers. In any event, most practice skills and routines are learned on the job and are therefore affected by the aforementioned individualisation. Whilst it is not surprising that, as a result, there are some differences in view among new peer reviewers, a series of activities are undertaken to address this (especially during peer review training). Key to addressing the issue is:

- The system of training employed.
- The structure by which a reviewer makes their judgement.
- The monitoring of performance over time.

3.24 Training System – Coupled with the open-mindedness sought when peer review applicants are interviewed, the system of training is aimed at bringing about consistency in the assessments of the peer reviewers. Trainee peer reviewers work initially with existing peer reviewers in assessing files and discussing decisions and slowly move on to assess files by themselves and then compare results on the same training files. This ensures that when they assess a file, their assessment reflects the views of the community of Independent Peer Reviewers.

3.25 Review Structure – Once a peer reviewer begins to conduct live reviews, they are assessing providers on the basis of a random stratified sample of work, putting into practice the training received on the peer review process. In ‘Quality and Cost’, and in research work since, it has been shown that the grading of overall work of providers is more strongly consistent than peer review assessments of individual files. Overview assessments of firms show greater observer reliability and it is the overviews that are relied upon for decisions.

3.26 Performance Monitoring – Early reviews of new peer reviewers are monitored carefully and their performance is compared over time with that of established peer reviewers. Monitoring may identify general training needs that can be addressed at future training sessions, or identify areas for development for an individual reviewer that can be resolved by closer monitoring or direct discussions. Where necessary, guidance notes are sent to all reviewers to alert them to repeated problems that are arising. Further training is conducted as often as necessary and is also aimed at ensuring consistency among peer reviewers once they have conducted a number of reviews. If, following training, a peer reviewer’s work shows inconsistency from that of their colleagues, consideration may be given to removing them from the peer review panel, although retraining/corrective action may also be considered.

- 3.27 Peer reviewer consistency is monitored throughout the duration of their contract. Monitoring takes the form of analysing the range of peer review ratings given by each peer reviewer, validation of peer review reports and further training exercises. If, during monitoring, concerns are raised regarding a peer reviewer's assessments, the concerns will be investigated by the Independent Consultant and resolved through further training, closer monitoring, direct discussions and/or revisiting their previous peer reviews, as appropriate
- 3.28 If, following remedial action, the peer reviewer's work continues to show inconsistency from that of their colleagues or if the quality of their report writing continues not to meet the expected standard, they may be removed from the peer review panel.
- 3.29 Consistency is also maintained through further training exercises, the assessment of model files and additional guidance notes for dissemination among peer reviewers.
- 3.30 A peer review of the peer reviewers will be conducted every three years to ensure that the appropriate level of competency is maintained.

Contracts

- 3.31 All peer reviewers are contracted with the LAA to carry out peer reviews under the guidance and monitoring of the Independent Consultant. The contract is between the peer reviewers and the LAA, rather than the Independent Consultant, for reasons of confidentiality and data protection with regard to Legal Aid files, and enables peer reviewers to look at any Legal Aid files.
- 3.32 This contractual arrangement requires that peer reviewers comply with the instruction, training and guidance given by the Independent Consultant; the LAA's role in the peer review process is purely an administrative one.
- 3.33 The contract covers all areas of the peer reviewers' roles and responsibilities and the LAA's obligations to them.
- 3.34 In addition to the general obligations of confidentiality and obligations to treat personal data in accordance with the Data Protection Act 198, the LAA has imposed non-disclosure obligations identical to those to which the LAA itself is bound. The peer reviewers' contracts include provisions governing conflicts of interest and protection of personal data. Supported by the LAA's own contract management procedures, these protect and control the use of information disclosed to peer reviewers as part of the peer review process.
- 3.35 The majority of peer reviewers are contracted to conduct at least 24 days peer review work per year (including training/updates) in order to maintain consistency. If it becomes evident that a peer reviewer is not

available/willing to conduct this volume of reviews, they may not be able to continue on the panel.

3.36 In addition to other rights of termination, a peer reviewer's contract can be terminated under the following circumstances:

- Where a peer reviewer is in breach of their confidentiality or conflict of interest obligations.
- Where the peer reviewer's own casework has been assessed by peer review and found not to meet the standard of competence required to be a peer reviewer.
- Where the peer reviewer's circumstances change and they are no longer practising and supervising in the area of law for which they have been appointed to the peer review panel and where their employment circumstances change such that they give rise to reasonable concerns as to their ability to carry out peer reviews with the necessary independence and objectivity.

3.37 Peer reviewers are asked annually to submit an update concerning their circumstances i.e. their place of work, category of law they are practising in, panel membership etc. Random checks are also conducted by the LAA to ensure that the information that is held is correct. For example, membership of Law Society Panels is checked.

Updates/Training

3.38 In conjunction with the ongoing monitoring of peer review results by the Independent Consultant for consistency purposes, peer reviewers are required to undertake updates/further training sessions. During these sessions the peer reviewers revisit the criteria, discuss any issues/findings and conduct further assessments of example files.

Senior Panel Members

3.39 Senior panel members were introduced in response to the consultation feedback on the Independent Peer Review process in April 2005. The role was initially designed to strengthen the representations process. However, the senior panel member role has been expanded to involve validating reports and contributing to the training of peer reviewers.

3.40 Senior panel members are appointed from the existing panel of peer reviewers based on their experience of the peer review process, report writing skills and consistency.

3.41 Senior panel members 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.

4 THE USES OF PEER REVIEW

- 4.1 Peer Review will be one of the audit tools used by the LAA to monitor provider performance.
- 4.2 Peer review can also be used for specific purposes detailed below:
- Targeted assessments
 - Random Assessments
 - Other purposes
- 4.3 A key part of the methodology is that peer reviewers are not informed as to the reason for the review. Furthermore, another key feature is the importance of ensuring that peer reviewers are exposed to a range of quality of provider work.

Targeted Assessments

- 4.4 When there are concerns about the quality of a provider's work, peer review is used to identify whether the provider is meeting the standard required by the Standard Terms.

Random Assessments

- 4.5 Random peer reviews of providers are undertaken to:
- Assess providers who do not have a valid peer review result where there are no known quality concerns.
 - Support the development of other auditing tools and screening data.
- 4.6 This exposes peer reviewers to a range of quality of provider work and also provides a controlled sample against which the LAA can gauge normal performance.

5 PEER REVIEW LOGISTICS

The Selection of Providers for Peer Review

- 5.1 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 will commonly be selected for peer review (see section 4). Providers are informed of the reason for the review. Peer reviewers are not informed of the reasons for review.

Provider Selection Process

- 5.2 Apart from contract manager referrals (targeted peer reviews), for both civil and crime, providers are subject to a peer review by spend of their contract **usually** every 3 years. However the LAA retains the right to peer review a provider at any time.

File Sampling

- 5.3 A stratified random sample of 15 files (where available) is selected per category of law for the purpose of peer review. The sample is stratified based on the proportion of work a provider reports in each matter type (for civil cases) or claim and outcome codes (crime cases). For crime and family file samples, there are further stratification criteria applied.
- 5.4 The LAA commissioned research by MOJ statisticians to confirm the appropriate sample size. The research specifically concentrates on the number of files that require review in any peer review sample to ensure confidence that the overall rating is an accurate reflection of the provider's work.
- 5.5 The findings support the current process of reviewing 12 files as this demonstrates a minimum confidence level of 97.5% that the result is an accurate reflection of the provider's overall quality.

File Selection

- 5.6 Using the computerised systems for reporting criminal and civil cases, a random sample of cases is selected for review from the pool of available cases.
- 5.7 The files for review are selected by a randomisation tool, which has been developed in Microsoft Access and Excel. All the files selected will normally have been closed within the last 12 months.
- 5.8 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.

- 5.9 If a provider is unable to submit two or more files as part of the sample selected for peer review, the matter will be investigated by the LAA. If the reason for the non-submission of files is reasonable, a new file sample may be selected⁶. This is to ensure that the peer review sample remains accurately 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, issuing a contract notice or imposing a contract sanction.
- 5.10 Providers are also asked to submit any files linked to those requested on the file list. If linked files are not submitted, peer reviewers will exercise their judgement whether the review can be appropriately conducted in the absence of these files.
- 5.11 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

5.12 Crime files samples will consist of the following randomly selected files:

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

If there are insufficient Crown Court, Police Station Only, Not Guilty plea and Non Standard fee files to make up a sample of 15 files, as described above, then Other work will be randomly selected (for example, guilty plea, prison law and appeals files) to achieve a sample of 15 files. If there are insufficient Other files, additional files will be selected from any available types of files to make up a sample of 15 files.

Family File Samples

⁶ This is not possible for limited file samples. See paragraph 5.19

5.13 A special situation with regard to file sampling exists for Family law due to the scope and complexity of the category. A sample of 15 files will be selected proportionally, according to the work of the provider, from the following case types⁷:

- Domestic Violence
- Children Act cases
- Other work

Normally no more than five files in any family sample will comprise of less than two hours work. These files will be reviewed if they appear in the first 15 files on the file list. There is no minimum number of such files required in a family file sample.

5.14 In future, the case types listed in paragraphs 5.12 and 5.13 may change but the purpose will remain to select this range of work if it is available.

5.15 The file sample will be selected from the pool of files accessible to the LAA. The provider's range of files, closed in the period covered by the peer review, will be checked to determine whether it is possible to achieve the strata of files for Crime and Family peer reviews described in 5.12 and 5.13. Where this is not possible (for example, where a provider has not closed the required number of files in one or more case types or when Crown Court files are held by the HMCS for processing and are therefore not available for selection), the file sample will be randomly selected from the pool of available files.

Limited File Samples

5.16 There are instances where it is appropriate to peer review a file sample of less than 15 files, for example, where our records show that a provider has closed fewer than 15 files in a particular category of law for a given time period. In this situation, all the available files will be selected for peer review. This will ensure that the review will cover the provider's entire population of closed files in that category of law for that period and we can be 100% confident that the quality of the reviewed sample reflects the quality of the provider's completed work for that period. The file selection guidance in paragraphs 5.12 and 5.13 will not apply to limited file samples.

File Requests

5.17 The LAA has the right to request files for peer review under the relevant Standards Terms applicable to face-to-face and telephone civil and crime contracts. The Contract requires that case files for any assessment should be provided promptly and within such time period as

⁷ For second peer reviews following a rating of Below Competence (4) or Failure in Performance (5) in an initial peer review, we may also select Divorce and Ancillary Relief cases, if these are available.

the LAA may reasonably specify. Failure to submit files will usually lead to the application of contract sanctions.

Conflict of Interest

- 5.18 Checks are carried out with providers and reviewers that there are no conflicts of interest before a specific peer reviewer is allocated for an assessment.
- 5.19 Conflicts, for the purpose of peer review, include situations where there has been the opportunity for the peer reviewer to form a view about a provider's level of competence or 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 firm/organisation that is scheduled for review.
 - Has previously worked for the provider.
 - Has recently acted against the provider.
 - Has had dealings with the firm, for example as an agent, acting for a co-accused, or acting for a private prosecutor.
 - Has taken over a matter from the provider.
 - Has any other issue, which might affect their view of the organisation to be reviewed.
- 5.20 Conflict checks also consider whether the organisations being reviewed are in direct competition with the peer reviewers themselves. A peer reviewer will not review any firm within their geographic region unless both the provider and the 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.
- 5.21 The provider is sent a list of all peer reviewers 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. Where a conflict of interest is identified by a provider or peer reviewer, that peer reviewer will not review the provider's files.

Allocation of peer reviews to peer reviewers

- 5.22 The peer reviewers' personal specification (see Appendix 2) stipulates that peer reviewer applicants are required to have experience of a wide range of cases in terms of case type and complexity within the specialist category of law in order to become peer reviewers. This requirement ensures that peer reviewers are able to undertake any review within their category of law. Therefore, after checking conflicts of interest and availability, peer reviews are randomly allocated to reviewers within their category of law.

5.23 For some Family and Crime peer reviews it may be necessary to allocate reviews to peer reviewers who are specialists in an aspect of Family or Crime work. For example, if a Family file sample contains predominately children matters because the organisation being reviewed specialises in this work, a peer reviewer who is on the Children Panel will be allocated to conduct the review.

Location of Reviews

5.24 With the introduction of remote working, it is anticipated that the majority of peer reviews will be carried out at their place of work or home. Reviews at LAA premises will be authorised on a case by case basis

6 THE PEER REVIEW PROCESS

6.1 The peer review process is as follows:

- Initial peer review.
- Second peer review, only automatically scheduled where a peer review rating of Below Competence (4) or Failure in Performance (5) is returned.

6.2 Providers have the right to make representations where the peer review rating is Below Competence (4) or Failure in Performance (5), provided that representations are made within 28 calendar days of receiving the initial peer review. Where representations are not made, the peer review result is final from the date of the initial report and the second review will usually take place 6 months from that date.

6.3 The LAA reserves the right to copy (and store) all files submitted for review by the provider.

6.4 Providers are asked only to submit completed files. The original files submitted for peer review are deemed a complete record of each case. Additional case documentation will only be considered post review in exceptional circumstances (for example, if submitting additional documentation is needed to support the provider's representations).

6.5 Where, during the course of a peer review, a peer reviewer identifies any adverse issue relating to the professional conduct of a solicitor, it may be reported through the appropriate channels. The LAA would take seriously any attempt to fraudulently change the content of files in order to affect the outcome of a review or of representations.

Initial Peer Review

6.6 Providers receive a category-specific peer review on a stratified random sample of their files. For each review, including completing the Peer Review Report (see Section 6.9), it is expected to take up to 14 hours. This is an estimation of the time taken to complete a peer review, and all reviews that take longer will be considered on a case by case basis.

6.7 Peer reviewers are provided with a list of files for review. The peer reviewer must work from the top of the list down to maintain the integrity of the randomisation. If a file is not reviewed the reason for this must be noted.

6.8 Each file is assessed against the standard criteria and ratings scale, copies of which are in Appendix 1. The criteria provide a framework against which the peer reviewer evaluates the quality of the information gained from the client and other sources, the advice given based on that information and the steps taken following that advice.

Peer Review Report

6.9 Following consideration of the files against the standard criteria, the peer reviewer produces a peer review report, which details the findings of the assessment. The report is detailed and contains appropriate examples from the files to support and substantiate the rating given.

6.10 The report may 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 3.

6.11 "The review" section describes the review that was undertaken. It reports the subject category reviewed, when and where the review took place, the name of the provider reviewed, the time-span 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.

6.12 The "Positive findings" section contains examples of good practice or good performance. Where a sample of work 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 better).

6.13 A peer review that rates the level of performance as Excellence (1) or Competence Plus (2) will probably not have any "major areas of concern" and therefore any issues on the files are more likely to be noted in the report as 'areas for development'.

6.14 Major areas of concern, are concerns that most influence the overall rating. These are most likely to be where the quality of advice, the competence of the fee earner or the level of client care given, has produced an adverse impact on the client or could have been prejudicial to the client or someone else. The following are examples of major areas of concern which peer reviewers have identified to date:

- **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 a serious prejudice to the client.

- **Advice** – The advice should always be clear and concise and easily understood by the client. 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 firm not attending at police stations to give advice when it should, or a client 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.
- **The mentally ill and vulnerable** – Mentally ill and vulnerable clients generally need specific consideration. One would expect failings with regard to mentally ill or vulnerable defendants 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, 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 2011. This would be so even if to act may be to the benefit of the client.
- **Cost issues** – Cost is not an integral part of the peer review system, but one that can properly be taken into account if, in the reviewer's judgement, cost issues are affecting the quality of advice and work. An issue of cost may or may not be a major area of concern. It would be serious if the client's own legitimate interests were subjugated to the question of the firm's fees. Where it is the case that the provider should just not have run up particular fees, it would be a less serious issue in terms of quality.

6.15 "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 overall rating. Examples include:

- The file is not in good order.
- Not following standard procedure and poor file management.⁸
- Not performing administrative functions as far as the file is concerned, which do 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.

6.16 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.

6.17 The aim of the section regarding "suggested areas for improvement" is to inform the provider where there have been instances of poor action, inaction or incorrect or incomplete advice and what the consequences of these are. It is not intended to direct how the provider should put this right though the report could indicate what approaches might be considered. Providers should decide themselves how best to implement corrective action procedures/processes to ensure that they are appropriate for their firm. However, corrective action is often based around one or more of the following:

- Supervision
- File reviews
- Training
- Use of standard letters
- Comprehensive advice
- Tailored advice

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

6.19 A rating (1–5) is given for **overall quality of advice/work** reviewed.

⁸ 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.

- 6.20 The report is intended as a reasoned document that explains and justifies a particular overall rating for the quality of the provider's work and is appropriately detailed. Reports for providers that have been rated Below Competence (4) and Failure in Performance (5) are more detailed than for those where an Excellence (1) rating is achieved. A provider should be able to understand 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 report why they have achieved their particular rating and not a higher or lower one. The report should, where necessary, also enable the provider to understand how their rating could be improved.
- 6.21 The narrative of the report should be specific enough for the provider to understand exactly what is being raised both in terms of positive comments and areas of concern. The 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.
- 6.22 Overall it should be clear from the report:
- What the findings are.
 - Why a particular rating has been awarded.

Representation Process

- 6.23 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 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.
- 6.24 Upon receipt of a peer review assessment of Below Competence (4) or Failure in Performance (5), the provider may make representations on the following grounds:
- The provider disputes the overall peer review rating.
 - The peer review file sample does not appear to the provider to be sufficiently representative.
 - Any other reasonable grounds.
- 6.25 Representations **must** be made in writing using the Representations form and **must** reach the LAA within 28 (calendar) days following the receipt of the Peer Review Report and the original file sample. A copy of the Representations form is located in Appendix 4.
- 6.26 The LAA will arrange for the representations to be considered by the peer reviewer who conducted the original review and a senior panel member. The senior panel member's participation in the representations process is intended to ensure that all the representations are fully considered.

- 6.27 Where it is not possible to involve a senior panel member in the representations process⁹, the representations will be considered by the peer reviewer who conducted the peer review together with a second peer reviewer.
- 6.28 Representations cannot be considered unless the original file sample (**in its original form as previously submitted**) is submitted with the representations.
- 6.29 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 panel member (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 report and if the rating should be changed.
- 6.30 The peer reviewer and senior panel member (or second peer reviewer) prepare a final report, which includes any amendments to the peer review report and their response to representations, with one of four possible outcomes:
- The original rating is upheld.
 - The original rating is revised.
 - A new review is requested.
 - Agreement not reached.
- 6.31 The report will be monitored and independently validated by an independent consultant or a further senior panel member (although the decision on the rating remains that of the peer reviewer) to ensure that the correct process has been followed and that the peer reviewer and senior panel member have considered and addressed the representations made.
- 6.32 On the rare occasion where it appears that the rating is not appropriate based on the evidence or where an agreement has not been reached between the peer reviewer and senior panel member (or second peer reviewer), the Independent Consultant is likely to seek the view of an individual with recognised expertise in the category of law. Their role is not to determine the rating but to provide expertise that should assist the peer reviewers to reach consensus.
- 6.33 The final peer review report is provided to the provider normally within 35 days of the representations (and files) being received by the LAA. If there is any doubt about the rating, it is normally resolved in favour of the provider but occasionally the independent consultant or the peer reviewers may request a further review.

⁹ For example, where all senior panel members on a particular peer review panel have a conflict of interest with the provider or where the panel does not have any senior panel members.

6.34 If a provider does not pursue the right of making representations within 28 calendar days (or such longer periods as may be agreed), 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 report will be considered on an individual basis provided they are made within the 28 calendar day period.

Second Peer Review

6.35 A second peer review is scheduled in the following circumstances:

- Where the work of the provider received a rating of Failure in Performance (5). The second review will be scheduled immediately.
- Where the work of the provider received a rating of Below Competence (4) in an initial review. The second review will normally be scheduled after six months from the date of the initial first review report. However the LAA reserves the right to Peer Review files earlier than 6 months.

6.36 If a second peer review is required it will be conducted on a new random sample of work and conducted by a different peer reviewer. The process followed is the same as that for an initial peer review.

6.37 If the provider is entitled to make representations following a second peer review, the representations will be considered by a different senior panel member (or second peer reviewer) who was not involved in the initial peer review. The representations process described in 6.23 – 6.34 will be followed.

Providers paying for peer reviews

6.38 Where a provider receives a rating of Below Competence (4) or Failure in Performance (5) in an initial peer review, the provider must reimburse the LAA the direct costs of the Peer Review.

7 PEER REVIEW OUTCOMES AND REPORTING

Feedback to providers

- 7.1 All providers receive written feedback, in the form of the Peer Review Report, on the outcome of their review (see Section 6). The report is sent directly to the provider where a rating of Excellence (1) or Competence Plus (2) is received. For a rating of Threshold Competence (3), 20% of the reports are submitted to a validator. Reports rated as Below Competence (4) and Failure in Performance (5) will normally be validated by an Independent Consultant.
- 7.2 The Independent Consultant or the senior panel member considers the report and checks that the peer review process and methodology has been followed correctly and that the comments made are reflective of the rating that the peer reviewer has given the provider. The Independent Consultant or the senior panel member will not alter a peer reviewer's rating.
- 7.3 Where an Independent Consultant or a senior panel member considers there to be a concern regarding the outcome of a review, for example if the comments made do not support the rating, or the particular peer reviewer appears to have been consistently awarding a particular rating, the Independent Consultant will investigate and resolve the matter before the report is fed back to the provider.
- 7.4 Investigations by the Independent Consultant may involve discussing the matter with the peer reviewer and/or the request of further information regarding the review or the reviewer's previous ratings. If, following investigation, concerns still exist, a separate peer review may be requested.
- 7.5 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.

Outcomes

- 7.6 Following completion of the full peer review process, the result will be confirmed. The result of the peer review will be utilised by the LAA as an accurate reflection of the competence of the provider.
- 7.7 Full descriptions of all the ratings can be found in Section 2 further information of which is provided below:

Excellence (1) and Competence Plus (2)

- 7.8 A rating of Excellence (1) or Competence Plus (2) indicates that the provider is conducting work to a high degree of competence. The result 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)

7.9 A rating of Threshold Competence (3) indicates that, although the quality of work that is delivered is proficient, 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)

7.10 A rating of Below Competence (4) 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 will result in the issue of a Contract Notice.

7.11 To minimise the risk to existing clients, it is recommended that the provider undertakes a file review of all open cases 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.

7.12 At the second review, following the 6 months (or less if deemed appropriate by the LAA) improvement period from the date of the first report, we will select cases that were opened and closed after the date the initial peer review was finalised. However, it is likely that in some areas of law, there will be insufficient new cases for the complete sample within the 6 months. In this case, we may allow an extended improvement period of an additional 3 months. If a file sample of 15 files is not available following the 9 month improvement period, then the review will go ahead using a limited file sample of all files closed since the date of the initial report. Therefore, should a full sample not be available when the second review is undertaken, we may select closed files that were open at the time of the first peer review but should have been internally file reviewed. The peer reviewer will accept any amendments or corrections identified and actioned following the file review, but still take into account failings that were not identified or corrected. However, frequent corrections identified through supervision and file review would not indicate that the organisation is adequately managing their quality of advice provision.

7.13 Peer review is conducted on closed cases. A peer reviewer will not consider any changes made to a file after it has closed.

7.14 If the second review also results in a rating of Below Competence (4) or Failure in Performance (5), it will normally be appropriate to terminate the provider's right to conduct publicly funded legal services in the relevant category of law. It may also be appropriate to terminate the

entire contract but this will be dependent on the provider's particular circumstances. Each case will be examined individually.

Failure in Performance (5)

- 7.15 A rating of Failure in Performance (5) (following two separate peer reviews as described in Section 6), indicates that the provider is conducting 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 Standard Terms (a Fundamental Breach as described in the Contract). It will normally be appropriate to terminate the provider's right to conduct publicly funded legal services in the relevant category of law and may be appropriate to terminate the entire contract. Again, in the scenario described in paragraph 7.14, this depends on the provider's individual circumstances.
- 7.16 In the event of a termination as a result of peer review, providers have the rights of review as set out in the Standard Terms of their Contract.
- 7.17 Outputs from peer review may be used to inform future activity, for example investigation of issues at a control audit.
- 7.18 LAA staff will not be able to explain, justify or alter any comments that appear on the report, as the report and the ratings decision is an independent assessment, written by the peer reviewer.

Publication of Peer Review Results

- 7.19 The LAA has committed to publication of confirmed peer review ratings. Our intention is that the information will be published on our website and regularly updated.

Peer Review Criteria and Guidance

Appendix 1A Peer Review Criteria – Civil Files

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?

Peer Review Criteria and Guidance

Appendix 1B 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.

A. Communication with the Client

1. 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 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 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.

Overall mark –This is the mark the reviewer allocates to the case as a whole, having already assessed the file against the review criteria, but is not necessarily an arithmetical averaging of the other marks.

Peer Review Criteria and Guidance

Appendix 1C Specialist Subject Criteria – Notes for Guidance

Housing:

The following should inform the 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.

Q1, 2 & 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 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.

Peer Review Criteria and Guidance

Appendix 1D Peer Review Criteria – Criminal Files

The File

1. How effective is the composition of the file?
2. How appropriate is the level of information recorded:
 - a) At investigation stage?
 - b) Post charge?
3. How appropriate was the management of the case throughout?

B. Communication

1. How appropriate were the lawyer's communication and client-handling skills?
2. How appropriately was the client informed of:
 - a) The merits (or not) of their defence/case?
 - b) All developments (including conclusion)?
3. How appropriate was the lawyer's communication with others, including the Crown Prosecution Service (CPS), defence counsel etc.?
4. How timely was all communication?

C. Information and fact-gathering

1. How effective was the lawyer in seeking relevant information from the client?
2. How effective was the lawyer in seeking relevant information from the police and/or prosecution:
 - a) At investigation stage?
 - b) Post charge?
3. How effective was the lawyer in seeking relevant information from others?

D. Advice and assistance

1. How good was the advice?
2.
 - a) How appropriate was advice on plea?
 - b) If (at any stage) the client was advised to plead guilty, was the timing of the advice:
 - (i) too early? (ii) appropriate? (iii) too late?

3. How appropriate was advice on appeal?

E. The work/assistance

1. Was all work done that should reasonably have been done?

If No, specify

2. How effective was the work done in achieving the client's (reasonable) objectives?

3. What was the impact of the lawyer on:

a) Bail?

b) Mode/venue?

c) The process?

d) What convicted of, or not

e) Sentence?

4. Was the client prejudiced in any way by the work done or not done?

If Yes, specify.

F. Efficiency

1. How efficiently was the work carried out?

2. Throughout the file, how effectively did the organisation use resources (including experts)?

3. Were any disbursements incurred appropriate?

G. General

1. Where ethical issues arise, were they dealt with appropriately?

2. **Overall mark:**

(a) At Investigation Stage

(b) At Magistrates Court Stage

(c) At Crown Court Stage

3. **Overall mark for the file**

Peer Review Criteria and Guidance

Appendix 1E Peer Review of Criminal Files – Notes for Guidance

General

In reviewing a file, a 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 has been a change of solicitor prior to completion of any particular stage (for example you *should not* review a file if there has been a change of solicitor during magistrates' court proceedings, but you *should* review a file where a firm advised a client at the police station up to the point of charge, but the client went to another firm for the magistrates' court stage).
- 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).

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 D3 deals specifically with advice regarding appeal. This question is concerned with how well they were informed about merits/developments other than advice regarding appeal.

C. Information and fact gathering

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 lawyer took appropriate steps to obtain information, but was not successful for reasons beyond their control.
2. Ditto.
3. Ditto.

D. Advice and Assistance

2. (a) The appropriateness of the advice on plea includes the timing of the advice.
Question 2(b) is concerned specifically with the timing of advice to plead guilty (where relevant).
3. This requires an assessment of both the timing of the advice and the actual advice given.

E. The Work/Assistance

1. This question is concerned with whether the lawyer/firm 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 lawyer/firm sought to achieve the client's reasonable objectives.
3. This is concerned with the 'value added' by the lawyer/firm in relation to bail, mode decision, etc. Is it apparent from the file that the work done by the lawyer/firm 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 lawyer/firm made effective use of resources both within and outside the firm, for example instructing agents for a distant court hearing, and whether this was appropriate, effective use of experts, counsel etc.

G. General

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 Reviewer Applicant Personal Specification

This document sets out the minimum and preferred requirements for potential peer reviewer candidates. These requirements are used when shortlisting candidates, and any evidence of meeting these requirements is assessed from the candidate's application form and any information from referees. When completing an application form, it is suggested that candidates refer to the requirements set out below.

Casework Experience

Minimum requirements:

- Must have a minimum of 1500 hours' post qualification casework experience under the LAA contract in the specialist category of law. At least 1000 of these hours must be personal casework. The remainder may consist of direct supervision of casework.
- Must have a current caseload in the specialist category of law.
- Must have experience of a full range of cases within the specialist category of law, in terms of case type and complexity.
- At least 50% of time spent working (casework, supervision training etc.) in specialist category of law.
- If applying for Crime Peer Reviewer, you (or your firm) must have applied for the Own Client Crime contract.

Preferred Experience:

- 3000 hours' casework experience under the LAA contract in the specialist category of law

Supervisory Skills

Minimum requirements:

- Currently must meet the LAA supervisor requirements set out in either:
 - the LAA's Specialist Quality Mark (SQM) Standard; or
 - the Law Society's Lexcel Practice Management Standard.
- Is employed as their organisation's "named" supervisor in specialist category of law under a current LAA contract.
- Currently must supervise other fee-earners/caseworkers.
- Experience of supervising staff in the "specialist" category of law
- Experience of supervising (preferably in at least **2** organisations)
 - at least **4** high level fee-earners/caseworkers, plus
 - fee-earners/caseworkers with different levels of experience (e.g. trainee solicitors)

Preferred experience:

- A range of previous supervisees in a range of different provider organisations.

LAA contract experience

Minimum requirements:

- A range of previous supervisees in a range of different providers.

Preferred requirements

- Experience of working with LAA e.g.as a Quality Manager or through preparation for audits

Other

Minimum requirements:

- Ability to appreciate different ways of working (in particular in relation to casework), by demonstrating experience of assessing the work of others, particularly in the specialist area of law (e.g. tribunal members, external supervisor, Authorised Litigator, panel assessor, trainer or carrying out other independent file reviews)

Preferred requirements:

- A practising solicitor (in England and Wales).
- Experience working in the not for profit sector (social welfare categories only).
- Some understanding of the nature of funding legal work.
- Some considered thought on the nature or concept of legal competence
- Ability to work and agree with others on issues of competence.

Peer Review Report Template

**Legal Aid Agency
Peer Review Report Form**

Provider

Account No

Category

Date of 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 reviewed

Appendix 4

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@legalaid.gsi.gov.uk

Provider's Name:

Account Number:

Category Reviewed:

Date of Review:

This form works best when submitted electronically. If you have a paper copy and would like an electronic copy, please email at PeerReviewRepresentations@legalaid.gsi.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 firm/organisation?

Yes/ No

(Please provide details below).

End of Document