

# Quality Assurance for Lawyers: Regulating in the Public Interest?

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# Quality Assurance and Revalidation

- Pilots
- Doctors and Nurses in UK
- Lawyers?

What public expect of us –that we already continuously quality assure lawyers – see the research referred to in Sharon and Paterson, *UNODC Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes (2019)* ch 4.

# Regulation and Quality

For Economists the justification for regulation of the legal services market is market failure caused by the asymmetry of information between the lawyer and the client.

That's why we cannot rely on client satisfaction surveys or Complaints programmes as good measures of Quality and competence. See Sharon and Paterson, UNODC Handbook (2019 )

- They underreport dissatisfaction – only 13% of the 15% of clients in the UK who were dissatisfied with an aspect of their lawyer's services made a formal complaint (Office of Fair Trading research, 2013 – See Handbook )
- One shot personal service client can only assess parts of quality – can't tell if lawyer got the law / transaction right.
- Weak on systemic problems

My solution: Revalidation/ Peer Review for lawyers – In UK we already do this for legal aid lawyers and have done for over 15 years. In Scotland this amounts to at least 20% of the practising profession.

# Scots Peer Review Cases and Criteria - CIVIL

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- 5 random files (OR 10% of a lawyer's files where the client is likely to be vulnerable, adult incapacity; mental welfare or immigration cases ) for each lawyer in the firm are assessed by independent, trained, experienced practising lawyers against 22 or so published peer review criteria. These include:
  - Effectiveness of lawyer's initial fact and information gathering skills.
  - Did the lawyer give accurate and appropriate ( and ethical ) advice throughout the case
  - Effectiveness of communications.
  - Whether the lawyer identified the need for appropriate experts or counsel.
  - Evidence of adequate preparation for each stage of the case.
  - Evidence of the lawyer taking steps agreed with the client with a reasonable time.
  - Whether the case was concluded effectively.

**Criteria are Client Centred**

## Scots Peer Review Mechanisms to overcome Reviewer Inconsistency

- **25% Double marking of files and practitioners**
- **Monitoring of all Reviewer Summary reports by the Quality Assurance Committee**
- **Monitoring of Reviewer scores and regular feedback to reviewers at debrief sessions**

Quality Assurance Peer Reviews ( Civil ) 3 <sup>rd</sup> Cycle 2017 Scotland								
					Current cycle		2nd Cycle	1st Cycle
Registered Firms					622		618	694
Reviews Undertaken					602(97%)		602 (100%)	667 (100%)
Double-marked					132(21%)		188 (31%)	171(26%)
No. of firms continued for comments					299(48%)		188(31%)	94(14%)
No. of firms with deferred extended review					35(6%)		37(6%)*	42(6%)*
No. of firms with immediate extended review					21(3%)			
No of special reviews					3(0.5%)		3(0.5%)	11(2%)
No. of firms to final review					12(2%)		10(2%)	18(3%)

# Results from peer reviews

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- 8% of civil practitioners fail their initial review
- Less than 2% of practitioners fail their final review
- Typical causes of fails:
  - Delays in taking action or applying for legal aid
  - Poor communication with clients, especially relating to the operation of the costs rules for legally aided persons
  - Poor file notes of phone calls or interviews
  - No or inadequate terms of engagements letters on files.
- Occasional examples of abuse:
  - Private charges to legally aided clients or padding of accounts.

# Conclusion - Costs and Benefits

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- Scots cost of QA in legal aid cases in 2013/14 was around 220,000 Euros (2.3% of Scots expenditure on legal aid administration) ( 123 Euros per file)
- (Cost of Scots Complaints 2016/17 around 2,582 Euros per case) .
- Evidence that peer review is driving up standards.
  - Fail rate has reduced on criminal files.
  - Numbers of special and final Reviews has fallen in civil.
  - Numbers of solicitors achieving the highest marking has increased.
  - Survey of solicitors in 2013 showed that 84% of respondents had a positive or neutral opinion on whether the QA scheme was an effective way of ensuring quality.
- A few solicitors who were doing very small amounts of legal aid, or had repeated failed reviews, withdrew from our register of suppliers.