PEER REVIEW AND QUALITY ASSURANCE

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THE EMERGENCE OF PEER REVIEW IN THE LEGAL PROFESSION[1]

Professional peer review,[2] where a panel of independent, experienced practitioners assesses the quality of work of other professionals against a set of criteria and levels of performance agreed with the professional community, has focused on a range of factors including inputs, structure, process and outcomes. In the light of the continuing problems of measuring the success of outcomes achieved by lawyers it is perhaps understandable that most peer review studies of lawyers should focus on a mixture of process and outcome. It has also used a range of different approaches. These have included direct observation, indirect observation (for example, through an examination of video-recordings), audio tapes, third party report, and the scrutiny of files.

All approaches have their difficulties. Direct observation[3] might appear the simplest and most straightforward, but it presents a range of practical and logistical problems. Court lawyers frequently experience continuations or postponements of hearings or trials. If a peer reviewer has been assigned to review that lawyer on a particular day, there may be nothing to assess because each of his or her cases has been postponed. If the observation is of a lawyer / client interview then there may be problems of intrusiveness or client consent. Indirect observation may be impractical since all parties, including the state may not agree to video or audio-taping of the courts or the lawyer's office.[4]

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[1] This part of the paper draws heavily on the work of Richard Moorhead during the Contracting for Advice and Assistance pilot for the English Legal Aid Board. It is reproduced with the kind permission of the author.

[2] For the definition of peer review as used in this article see *supra note* 9.

[3] See e.g. Hazel Genn and Yvette Genn, THE EFFECTIVENESS OF REPRESENTATION IN TRIBUNALS (1989)

[4] Videotaping of court proceedings is rare in the United Kingdom.

Third party report, where peers interrogate knowledgeable third parties, has been used sparingly and to limited effect. Judges, perhaps the most obvious third parties, have shown little enthusiasm to date for systematic involvement in the assessment of individual court lawyers. Perhaps this is because they fear that it might destabilize the delicate balance of understandings between the bench and the bar which they consider to be important for the smooth operation of the courtroom. Or perhaps they are aware that making judgements of this nature is fraught with difficulties when they need to adjudicate also on Clients and cases before them.

Model or standardized clients[5] on the other hand, have been used in a number of studies of doctors and lawyers, although for the reasons stated in earlier research[6] they can only assess certain aspects of the quality of service which they receive. Furthermore, using standardized clients can raise ethical issues unless the lawyers have agreed to receive unidentified model clients in a specified time period.[7]

Given the problems associated with these approaches, it is understandable that the majority of peer review programmes rely principally on case file review against agreed criteria. Although issues of client confidentiality can arise, they are generally less intrusive than those raised by observation. Moreover, files are easier to make available to reviewers (especially if the case has closed), thus reducing the cost of the programme.[8] At the outset of peer review in England and Wales concerns were voiced that in criminal cases or cases where barristers were involved there

[5] Typically actors who have been trained by researchers to present the same case history to a range of different lawyers. By keeping the input constant any variations in the performances of the lawyers can more fairly be attributed to differences in lawyering.

[6] See for example, Richard Moorhead et al, QUALITY AND COST, (2001) and Richard Moorhead, Avrom Sherr and Alan Paterson, *Contesting Professionalism* 37 LAW AND SOCIETY REVIEW 765 (2003). On the use of standardized clients in clinical legal education see Karen Barton, Clark Cunningham, Gregory Jones and Paul Maharg, *Valuing what clients think,* 13 CLINICAL LAW REVIEW 1 (2006).

[7] This was the approach used in England and Wales, where providers of legal services who wished to obtain a contract to provide legal aid services from the Legal Services Commission had to agree to receiving unidentified model clients during the period of the contract. See Moorhead et al, QUALITY AND COST, (2001).

[8] The major cost involved with peer review is paying the fees or salaries of the reviewers.

might be relatively little on the file for the reviewers to assess. This has not proved to be the case.[9]

Having specified the aspects of the service which will be reviewed, and the subject of the review itself, there is then the need to assimilate these factors and generate specific criteria for evaluating quality of performance.[10] Criteria can be aimed at management systems, strategy and resource allocation, professional threshold requirements (such as conduct rules), as well as accuracy and approach and the impact of failures (or successes) on the clients in question. As a result the criteria can lead to long, exacting lists. However, there is inevitably a trade-off between the length of such lists, the consistency of reviewer's marking and the number of files a peer-reviewer can look at. There is also a trade-off in the opposite direction between consistency and validity: a reviewer needs to look at a certain number of files to be satisfied a valid judgement can be made. The law of diminishing returns ensures that reducing the number of criteria that can be answered increases the number of files than can be looked at, but if taken too far may also reduce the consistency of the judgement, in turn reducing its validity.

What is needed is a balance, and trial and error[11] suggests that the optimum number of criteria for reviewers to work with is something in the region of twenty. This argues for a focused approach on limited aspects of service by the peer reviewers, or a set of more general concepts which can be addressed in different ways depending on the subject matter under consideration. A search through the literature throws up a number of different aspects of performance which are capable of analysis by peer review. These include: accuracy, appropriateness and timeliness of advice; client care (taking adequate instructions and providing initial information concerning future actions, including client meetings); adequate, appropriate and timely fact gathering;

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[9] The experience of the pilot peer review program into the quality of the work done by public defenders in Scotland similarly indicated that there was sufficient on their files to permit assessment of the quality of their work.

[10] It is essential to involve the peer reviewers in the generation and agreement of these criteria, and the evidence necessary to satisfy them, once they have seen a range of files and identified the types of issue that can be assessed by looking at files and talking to legal advisers.

[11] See for example the discussion of peer review in Avrom Sherr, Richard Moorhead and Alan Paterson, LAWYERS, THE QUALITY AGENDA (1994) and Richard Moorhead et al, QUALITY AND COST, (2001).

adherence to the requirements of professional responsibility; appropriate strategy formation and execution; and adequate staff supervision and case management; and recording of all of the above.

Nevertheless, the desirability of reviewers commenting on the overall quality of the work done in a case "in the round" suggests that in addition to assessing files against individual criteria, reviewers should also be able to award an overall mark to the case. A further challenge for reviewers then is the marking scheme to be adopted. While this could be a simple pass/fail standard, an issue would still remain as to where to set the passmark. Much depends on the purpose for implementing peer review and quality assurance. If the aim is to "weed-out" poorly achieving practitioners from poverty legal services programmes, a pass/fail standard at the level of minimum competence will suffice. If however, quality assurance has wider goals, including the raising of professional standards over time, the review process should contain positive reinforcement where the practitioner demonstrates good practice and the pass/fail standard may be adjusted over time. This might then need a Likert Scale of achievement.

Peer review programmes for poverty legal services lawyers in the UK have utilised the quality continuum set out in Figure 1.[12] In Scotland, files are marked on a five point scale (1=non-performance, 2=inadequate professional services, 3=threshold competence, 4=competence plus and 5=excellence).[13] By placing the passmark at around threshold competence at the outset the schemes allow service providers to get used to a quality assurance regime whilst leaving room for quality enhancement over time.

[12] Developed by Paterson and Sherr in Avrom Sherr, Richard Moorhead and Alan Paterson, LAWYERS, THE QUALITY AGENDA (1994).
[13] In England and Wales the same five point scale is used, except in reverse, with 1 being Excellence and 5 being non-performance.

EXCELLENCE

COMPETENCE PLUS

THRESHOLD COMPETENCE

INADEQUATE PROFESSIONAL SERVICES

NON PERFORMANCE

Figure 1: The Performance Continuum

In addition, there is a risk that if the passmark was placed higher up the scale, competent providers would be lost to the service and access problems or "advice deserts"[14] created.

Finally, in order to maximise the fairness and validity of peer review it is necessary to select reviewers who are independent persons with significant current or recent practical experience in the area(s) being reviewed, to involve them in the development of the criteria and the assessment protocol and to train them in both on actual files. To ensure ongoing consistency amongst the reviewers it has become accepted practice to implement double-marking of a proportion of the files to be reviewed.[15]

PEER REVIEW IN SCOTLAND

A. = Criminal work

The Scottish Legal Aid Board's first foray with peer review was related to the work of the Public Defence Solicitors' Office (PDSO). This was the newly fledged public defender service for Scotland, which built on an earlier pilot project which lasted from 1998 to 2003.[16] Although the service consisted of approximately ten salaried lawyers employed by SLAB (there are around 600 lawyers in private practice who are registered to do criminal legal aid

[14] In the United Kingdom in the last few years anecdotal evidence has begun to emerge suggesting that in some parts of the country, particularly in rural areas, a shortage of private lawyers is occurring who are willing to undertake work for legal aid clients because of the low rates of remuneration from the state for such work.

[15] See Richard Moorhead et al, QUALITY AND COST, (2001)

[16] See Tamara Goriely et al, THE PUBLIC DEFENCE SOLICITORS' OFFICE IN EDINBURGH (2001).

work) it provides a useful benchmark for SLAB when assessing the work and cost of the private profession.

In part to address issues of quality which were unresolved after the review of the pilot project,[17] in early 2003 SLAB established a working party to draft a set of peer review criteria for assessing the work of the public defence lawyers undertaking summary criminal work.[18] The draft criteria were revised by leading practitioners and then tested with a further group of established practitioners at a workshop at the end of March, 2003. Following discussion of the criteria, they were tested against a range of case files with the practitioners working in pairs. After training, the pairs attained a high degree of consensus. The markers agreed that in light of the peer review research in England and Wales, it was sufficient for each criterion to be marked against a threefold scale of (1) "below requirements", (2) "meets requirements" and (3) "exceeds requirements". It was also agreed that there should be provision for two other possible answers, namely: C or "can't assess" (meaning that there is insufficient information on the file for the reviewer to assess) and N/A or "not applicable" (meaning that in the particular situation of the case being reviewed that criterion is inapplicable). Finally, it was agreed that, as in England and Wales, an overall mark should be assigned to the file and that this should be on a five fold scale, approximating to the five levels set out in Figure 1, with a "1" score being so poor as to be almost non-performance and a "5" score as Excellent. This overall mark would not be the product of a mathematical averaging but rather of the reviewer's professional judgement bearing in mind a common set of marking protocols. A comments section was added to the end of each criterion and at the end of the overall file report. These sections provided a few lines for remarks from the reviewer to explain either the overall mark given to the file or any fail scores on individual criteria. SLAB also determined that 25% of files should be double marked to enable marker consistency to be assessed and maintained.

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[17] Tamara Goriely et al, *op.cit.*

[18] "Summary" here refers to the procedure adopted for less serious offences in Scots Criminal law.

By the end of the development phase the practitioners and SLAB came to the conclusion that:

1) Despite the early skepticism in a number of quarters that Scottish criminal lawyers would not keep detailed enough records on their files to enable a peer reviewer to assess what had been happening in summary cases, the workshop had demonstrated that the criteria could be applied without significant difficulties to the PDSO files;

2) The criteria could be applied consistently by different markers and such areas of significant disagreement in the scoring as emerged could largely be attributed to differences in knowledge and local legal culture[19] between the reviewer and the original file handler;

3) These differences in local legal culture could affect the scoring on the criteria but the effect of these could be counteracted by the training of the reviewers, using the comments section at the end of the form and providing an opportunity for the lawyers' whose work was being reviewed to respond to fail scores on particular criteria;

4) If the pilot phase threw up any significant problems there might be some merit in exploring some limited use of customer satisfaction surveys[20] and observation[21] as supplementary measures.

5) Overall, peer review based on using files, even in the criminal legal aid field, was a valid and acceptably reliable method for assessing the quality of case handling in criminal legal aid cases provided that peers of appropriate experience are selected, that reviewers are given appropriate training and that provision is made for feedback from the staff being reviewed.

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[19] See note 26 *supra*.

[20] However, it was noted that the research on the pilot public defender project had encountered considerable difficulties in trying to implement a customer satisfaction survey, due to an inability to track sufficient numbers of accused persons or to persuade them to assist with the research. (See Tamara Goriely et al, 2001 *supra Note 29*).

[21] Up until the workshop it had been thought that it might be necessary to amplify the information on the file through observation in order to answer some of the criteria and secondly that there would be severe practical problems in carrying out such observation. The option of following an individual PDSO lawyer around the courts on a particular day was not considered to be a practical one but it was felt that if the PDSO had several cases coming before the same sheriff on a particular day there might be merit in an observer watching a whole morning thus enabling them to take account of factors such as the mood of the sheriff and the cooperativeness of the fiscal.

Subsequently, SLAB implemented a pilot programme of reviewing files from the PDSO with the help of two of the trained peer reviewers. The results of this pilot programme over nine months were considered at a further seminar for the reviewers and the Head of the PDSO at the end of August 2004. It was clear that one of the markers had awarded an overall "fail" mark to considerably more files than the other. As may also occur with variations in gradings by different academic markers, an examination of the double marking of the same files by the two reviewers revealed that they had taken significantly different approaches to two key matters. The first was in relation to omissions from the files.[22] It was agreed that a broader brush approach was preferable in criminal cases where there was a tendency for less to be written down than in civil cases.[23] The second difference stemmed from a difference in the pass/ fail standard which they were applying. One had applied the equivalent to a minimum adequate performance (see Figure 1) while the other had applied a higher pass mark. It was agreed that the pass/fail standard for a file should be set at the lower level, that of the competence of the solicitor of ordinary skills (equivalent to the test for professional negligence.[24]

With these matters resolved, a series of additional files were marked and a high degree of uniformity achieved. The seminar attendees concluded that the robustness of peer review in relation to summary criminal files had been demonstrated. Armed with this conclusion SLAB, with the backing of the Scottish Executive, initiated three way negotiations between the Law Society, the Scottish Executive and SLAB, over extending peer review in criminal cases from the files of the PDSO service to the legal aid files of the private profession in both summary

[22] One had always marked these as "Cs" ("can't say") whereas the other had taken the view that if there was nothing on the file, but nothing to suggest that the point had not been covered AND nothing appeared to hinge in that case on its presence or absence then she would award a "2" rather than a "C".

[23] In relation to assessment protocols it was agreed that in the light of the broad brush approach the appropriate rule of thumb to be applied to the scoring of files would be that 3 or more "1"s or "C"s would prima facie lead a file to fail, unless in the reviewer's professional judgement the failures or omissions did not justify the file failing.

[24] Known in Scotland as the *Hunter v. Hanley* 1955 S.C. 200 test after the leading case which established the negligence standard there. The English and Welsh standard is set at Competence Plus.

and solemn[25] cases. Essentially what was on offer was an increase in fees for criminal legal aid work in return for quality assurance in the shape of peer review. Although this proposal was accepted by all three parties in principle, the details have taken many months to resolve. At this time a version of the peer review criteria for solemn and summary cases has largely been agreed upon and plans are in train to pilot these on anonymised files.[26]

B. Civil work

1. The background

While the criminal negotiations were dragging on, following separate, and rather speedier negotiations between the Scottish Executive, SLAB and the Law Society, it was agreed between the three parties that peer review would be introduced from October 2003 for all civil legal aid and advice and assistance practitioners in Scotland. In return for an increase in fees for civil legal aid work the profession had accepted quality assurance in the shape of peer review, A total of 752 firms (out of the 1,200 or so total for legal firms in Scotland in 2003) were registered to provide civil legal aid or advice and assistance and a rolling review of all these firms commenced on 1st July 2004, which was scheduled to be completed by October 2006. In practice the cycle of all civil legal aid firms was effectively completed by December 2006. The process is administered by the Quality Assurance Committee of the Law

[25] The procedure adopted for more serious crimes in Scotland, which involves a jury.

[26] The quality assurance of Scottish lawyers doing criminal defence work will not in the future be restricted, as it currently is, to the ranks of solicitors. It seems that advocates are likely to follow suit for much the same reasons as the solicitors. Requests by advocates for a new "pay" deal from the Scottish Executive with respect to criminal cases, have provided the key to negotiations between SLAB and the Bar to introduce peer review. However, after preliminary discussions it emerged that there were insufficient written records of the work done by advocates to afford a robust basis for peer review of advocates. It has therefore been agreed that peer review of advocates and solicitor advocates will primarily be based on observation of their court work by trained peer reviewers. Even given the much smaller number of advocates regularly handling criminal cases (as opposed to solicitors), the logistics of such an operation are proving difficult to crack . The draft criteria are being worked on with an eye to a pilot programme next year. It has been agreed that where an advocate fails his or her routine review, in place of an extended review (as occurs with solicitors) they will be tested by taking part in a mock trial with a real judge.

Society (QAC).[27] It recruited a team[28] of peer reviewers from the solicitors' branch of the profession, arranged for them to be trained, and set in place the current review programme. As on the criminal side, a set of twenty or so criteria were developed with input from senior practitioners. These were refined and tested on a series of anonymised files by the peer reviewers working together in pairs for training purposes. No significant problems were encountered.[29] At the end of the exercise it was concluded that (1) the criteria could be applied without significant difficulties to the files; (2) the criteria could be applied with reasonable consistency by different markers and (3) no differences due to local legal culture were detected.[30] These findings were reinforced in subsequent training sessions.

2. Operationalising peer review

Early on it was agreed between the Law Society and SLAB that up to five files per legal aid practitioner in a firm would be reviewed in the initial or "routine" review.[31] The files randomly selected for review by SLAB are sent to the reviewers who mark them against the agreed criteria and then return the files and mark sheets to the QAC. The QAC examines the reports from the reviewers[32] and determines whether the firm should "pass" the first or routine review of its files. Most firms do, and they receive a report informing them that they have passed, but identifying points from the reviewer's reports that need attention for the future. For the small minority that do not pass at the first time of asking (eleven per cent in the first

[27] Its membership includes members from Law Society, the Scottish Legal Aid Board and the public (with some knowledge of quality assurance in other walks of life).
[28] Initially there were seventeen civil peer reviewers, with a range of specialisms and spread across Scotland, all of them full time practitioners doing the review work in their spare time (on a remunerated basis). Two reviewers resigned in mid-cycle following their appointment as part-time judges and in 2006 a further ten reviewers were appointed and trained.
[29] As with the criminal files a problem was found to arise as between scoring omissions from the file as "1"s, "C"s or "2"s. The general conclusion was that in civil files the normal way to score omissions should be with a "C" but that too many "C"s would lead to a possible fail of the file.
[30] In consequence of the third finding the QAC have been happy to accept that reviewers should not normally review firms operating in their own geographic locality, to obviate questions of conflict of interest.
[31] However, it is the firm, rather than individual practitioners which is approved by the peer review process. This leaves open the potential anomaly that a firm may pass its peer review overall, but one or two practitioners fail theirs.
[32] Quite apart from files that are being double marked, it is common for a firm's files to be assessed by two or more reviewers with different specialisms.

cycle) a continuation may be given to clarify further points or an "extended" review (five per cent, in the first cycle) will be instigated. Such reviews take place on site and are conducted by two different reviewers from those who conducted the routine review. They may call for any legal aid file they choose and do not restrict themselves to merely five files. The purpose of an extended review is to see whether the potential flaws detected in the routine review are widely spread through the firm's files, or merely an aberration. Where a firm fails an extended review (fortunately a relatively rare event, only two per cent in the first cycle) it has a period of one year in which to rectify the problems revealed by the routine and extended reviews before a "final" review is held. In the interim a "special" review may be conducted. Although this process sounds somewhat threatening, and indeed may ultimately lead to a firm being refused permission to carry out poverty legal services/legal aid work in the future, the primary aim of peer review in Scotland is to boost the overall quality of the work being done by legal aid practitioners, rather than to weed out weaker firms. It follows that considerable emphasis is given in the process to passing constructive feedback to the firms, with points of good practice being highlighted as well as points requiring attention for the future. In this respect, legal aid firms are merely following in the footsteps of large corporate firms or those that are members of a club or network of similar firms in the UK or European firms who have adopted independent file review quality assurance processes.

3. The Outcomes[33]

By the end of September 2006, the number of firms registered to do civil legal aid and assistance work in Scotland had declined from the 752 registered in 2003 to 694[34] and the reviewers had assessed 665 (99%) of them (with 171 double-marked). 617 firms had been considered by the QAC with eighty seven (13%) continued for comment, thirty six sent to extended review (5.4 %) and fifteen (2.3 %) to final review.[35] In the three years of the cycle 1,514 practitioners had been marked and a total of 7,122 files reviewed. On average the reviewers had assessed eighty nine practitioners each (although one had only done fifty-four

[33] The data in this section is available to the author from his participation in the QAC and his role as research adviser to SLAB, which entailed the training of the peer reviewers and monitoring the consistency of their marking.
[34] Of which twenty had effectively ceased to do any legal aid work.
[35] Five of these eventually chose not to undergo final review and instead withdrew from the civil legal aid and assistance schemes.

while another had done 125). Since it is the exception rather than the rule for a practitioner to fail a routine review, the average number of practitioners failed by the reviewers was only 7.6 (8.5%) per reviewer since July 2004. Indeed practitioners were almost twice as likely to receive an overall score that exceeded[36] threshold competence (a "3") as they were to fail. On average each reviewer had looked at 419 files, although again the range went from 217 to 588. They had failed on average 9.7% or forty-one of these files each, (with the range being from twenty four to sixty-eight). In relation to distinction marks, 14.2% of practitioners were assessed as achieving a distinction grade, although only 10.3% of files received a distinction score.

This can be compared with the position in England and Wales, although their results, however, shows reviews carried out by looking at each firm or organization ("provider")which contracts with the Legal Services Commission, and not, as in Scotland, by looking at individual practitioners**.** By mid-November 2006, 98 peer reviewers had carried out reviews of 1016 civil legal aid providers in England and Wales. In the three years of the cycle a total of 26,132 files were reviewed. On average the reviewers had assessed 10.37 Providers each (although the number of reviews conducted by individual peer reviewers ranged between 1 and 53). It is unusual for a provider to fail a review; of the 1016 reviews conducted since August 2003 only 207, or 20.37%, received a failing grade. Of these only 16, or 1.57%, received the worst grade of failure in performance. Four-hundred and seventy-six, or 46.85%, satisfied the minimum expectation of threshold competence. A substantial 296 providers, or 29.04%, received grades of competence plus. However only 38, or 3.74%, were recognised as having attained excellence. Crime was also considered over the same period in England and Wales.

Just as with academic assessments or grading, we should expect to see natural variations between markers, with some more predisposed to award fail or distinction marks than others.[37] However in the three year cycle, steps were taken to counter these tendencies through the provision of six monthly debrief and feedback sessions. At the end of the cycle fourteen of the sixteen operating reviewers were within 4% of the group norm (and eight were within 2.5%) for file fail marks. In relation to distinction marks for files, twelve of the reviewers were within 4% of the group norm (and nine were within 2.5%). Both in relation to

[36] i.e a 4 or a 5. Such scores are called distinction marks.

[37] Markers also vary as to the use of half marks or the use of really high or really low marks. Both were true of the reviewers. Most do not use half marks but a significant minority have done so. Again, overall the reviewers in marking files used a "5" less often than they used a "1" but nether score was used very frequently. Thus all the reviewers except one had given a "1" (the average being 3.7 and the range from one to eleven). However, eight reviewers had never award a "5" for a file and of the eight who had, the average was 2.25 (and the range was from one to seven).

the fail scores and distinction scores there was a reduced range from the marking of the reviewers in the early stages of the cycle.[38] These figures indicate that over the complete cycle the greater familiarity of the reviewers with the procedures and with each others' marking has led to a greater cohesion and consistency in the marking around the group norms for fails and distinctions.

A preliminary scrutiny of the double-marked files suggests that in two thirds of cases markers agreed on the overall score given to a file and in over 85% there was agreement as to whether the file should pass or not. Despite this degree of consistency between markers, there are indications that if a reviewer has a low or high overall number of fail or distinction scores in comparison with the average for all reviewers, this will be reflected in situations where a file is double marked. Thus, those whose overall scores for the cycle suggest that they are soft markers (because they tend to fail a smaller percentage of files than the bulk of their colleagues) will tend to award a lower mark to a file that is being doubly or trebly marked than a reviewer who is nearer to or above the group norm for file fails. Equally reviewers whose distinction marks are somewhat above the group norm and are thus perceived as being more generous than their colleagues will tend to award a higher mark to a doubly marked file than a reviewer who is nearer to or below the group norm for distinction scores.

It is too early to assess all the lessons to be learned from the Scottish civil peer review programme. What has emerged is that the overall quality of the service provided, and of the providers themselves is reassuringly high, with less than 10% of files and providers failing even their routine reviews.[39] Moreover, the errors that emerge from the files are more often failures in communication or in the application, or explanation to the client, of the legal aid scheme. Errors in advice on the law, professional negligence or professional misconduct[40] are fortunately relatively uncommon.

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[38] After the first six months of the cycle only eight of the seventeen reviewers were within 4% of the group norm for file fails (and only two were within 2.5%). In relation to distinction marks only four of the reviewers were within 4% of the group norm (and only one within 2.5%).

[39] Since routine reviews only cover 5 files per practitioner, there is always the risk that one bad file will distort the picture of a practitioners overall quality. Extended reviews cover considerably more files than routine reviews and therefore provide a fairer and more rounded picture of the practitioner's overall quality of work.

[40] Including money-laundering offences.

This is significant since over the years there have been a number of studies in the United States[41] and England and Wales[42] calling into question the quality of work of poverty legal services lawyers, but rarely utilizing peer review and always with a limited sample of lawyers. However in the last decade several new studies in England and Wales[43] seem to be painting a more positive picture. The civil legal aid and assistance peer review cycle in Scotland not only reinforces this positive picture, it is possibly the first successful attempt to assess the quality of the total population of poverty lawyers in a country.[44]

CONCLUSION

The experience of the peer review studies in England and Scotland done to date suggests that peer review based on files, an agreed set of criteria and trained reviewers can deliver an effective quality assurance programme in the UK. Work is continuing to reduce as far as possible the potential for detriment to the livelihood of practitioners or the effect on clients through natural variations in approaches to marking by the reviewers. Work is also being planned with a view to extend peer review from files to the observation of interview or court performances. In short, as in academia, the quest continues apace for effective, fair and transparent methods for assessing quality of performance in lawyers.

However, the impact of the widespread pursuit of quality assurance in the guise of peer review for the poverty legal services sector of the profession remains to be seen. Peer review

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[41] For example, Abraham Blumberg, *The Practice of Law as a Confidence Game* 1 LAW AND SOCIETY REVIEW 15 (1967), Carl Hosticka, *Lawyer-Client Negotiations of Reality* 26 SOCIAL PROBLEMS 559 (1979), Michael McConville and Chester Mirsky, *Criminal Defense of the poor in New York City* XV(4) REVIEW OF LAW AND SOCIAL CHANGE 581 (1986) and Michael McConville, *Lawyering for the poor in New York City's criminal courts* 12(1) HOLDSWORTH LAW REVIEW 22 (1987)

[42] For example, John Baldwin and Michael McConville, NEGOTIATED JUSTICE (1977), Doreen McBarnet, CONVICTION (1981), and Michael McConville, Jacqueline Hodgson, Lee Bridges and Anita Pavlovic, STANDING ACCUSED (1994).

[43]Richard Moorhead , Avrom Sherr, Lisa Webley, Sarah Rogers, Lorraine Sherr, Alan Paterson and Simon Domberger, QUALITY AND COST, (2001), Richard Moorhead, Avrom Sherr and Alan Paterson, *Contesting Professionalism: Legal Aid and Nonlawyers in England and Wales* 37 LAW AND SOCIETY REVIEW 765-808, (2003), Lee Bridges et al, EVALUATION OF THE PUBLIC DEFENDER SERVICE IN ENGLAND AND WALES (2007).

[44] Which represent 20% of all solicitors in private practice in Scotland.

is expensive to implement, and since it will certainly increase pressure on lawyers to keep better files, the cost may rise further if the profession succeed in passing the cost of this to the public purse which funds legal aid. On the other hand greater efficiency by the profession will reduce costs overall and deliver a better service to the public.