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**Topic:**

**Legal Quality and Outcomes: The case of the Legal Quality Assurance Unit in Legal Aid SA in independently monitoring the quality of legal aid services delivery**

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## **Table of Contents**

1. Introduction	1
2. The need for legal quality assurance monitoring	1
2.1. Client perspective	1
2.2. Stakeholder perspective	1
2.3. Shareholder perspective	2
2.4. Organisational perspective	2
3. Legal quality monitoring challenges experienced by Legal Aid SA	3
3.1. The need for greater independent reporting on quality	3
3.2. Inconsistency of measurement	3
3.3. Focus on outputs and not outcomes	3
4. Legal quality assurance monitoring options considered	3
4.1. Peer reviews	3
4.2. Periodic external reviews by consultants	4
4.3. Stakeholder feedback	4
4.4. Client surveys	4
5. The case for a legal quality assurance unit	5
6. Legal Quality Assurance Unit – Legal Aid SA case study	6
6.1. Structure and reporting	6
6.2. Financial and administrative arrangements	6
6.3. Quality assurance coverage	7
6.4. Quality assurance methodology	7
6.5. Quality assurance instruments – focus on outcomes	9
6.6. Use of technology	10
6.7. Building the image, credibility and respect of Quality Assurance Unit	11
6.8. Key implementation challenges and resolutions	11
7. Performance report – Legal Quality Assurance Unit	12
7.1. Quality coverage and assessment statistics	12
7.2. Dealing with poor performers	13
7.3. Key findings – criminal legal services delivery	14
7.4. Key findings – Civil legal services delivery	14
8. Lessons learnt	14
9. Conclusion	15

## **1. Introduction**

The Legal Quality Assurance Unit was established by Legal Aid SA during 2009. This innovation was as a result of various needs and challenges that were experienced by our organisation and which are highlighted in this paper. This paper further explores the alternate assurance mechanisms that were considered before finally settling for this independent internal model for the provision of assurance on our legal quality delivery programme.

In this case study we will focus a great deal on the functioning and operations of the unit. This will include a review of its structure and reporting, as well as its financial and administrative arrangements. A large section will also be devoted to examining the methodology employed by this unit in fulfilling its function, as well as the challenges that it experienced during its implementation and how these were resolved.

The coverage and performance information of the unit will also be shared. This will include an examination of the key findings that have been made in both criminal and civil matters, as well as how poor performers are being supported to improve. We will conclude the paper by examining the lessons we have learnt with our establishment of this unit.

## **2. The need for legal quality assurance monitoring**

### **2.1 Client perspective**

Clients, as the recipients of legal aid, have a significant interest in the quality of the legal services that they receive. The outcomes of their individual matters can be influenced to a large extent by the quality of this representation. Poor service delivery can often result in significant prejudice to clients. It is against this background that it is vitally important that clients are given some form of assurance by Legal Aid SA that the monitoring of the quality of the legal services that are rendered by its practitioners is of great importance and that appropriate quality control mechanisms are in place to ensure that this happens as a matter of course.

Noting the common perceptions of people that anything that is provided for free must invariably mean poor quality of service, the challenge caused by this perception becomes greater from a legal aid perspective where services are rendered to clients without charge. This perception can only be dispelled if Legal Aid SA is able to ensure that the quality of services received by each client is consistently of a good standard. This requires practitioners to render services in a manner that is able to inspire the confidence of clients in them as legal practitioners, as well as in Legal Aid SA.

### **2.2 Stakeholder perspective**

The provision of legal aid to clients involves more than just a relationship between Legal Aid SA and individual clients. Depending on the type of legal matter, there are many other stakeholders involved in both the criminal and the civil justice systems.

In the criminal justice system, Legal Aid SA is involved in the representation of the majority of clients who appear before court. It is fairly common for entire court rolls to

comprise only of matters where accused persons are on legal aid. Noting the significant role we play in the court system, it is therefore important that all stakeholders within this system, especially the prosecution services and the judiciary, respect our ability to contribute positively to the efficient running of this system.

This respect can only be earned if our practitioners conduct the representation of their clients in a professional manner. This requires our practitioners to be well prepared for their cases, to ensure that the best interests of their clients are advanced and protected, and that the court is not delayed in attending to the matters before it. The earned respect of stakeholders will ensure that our lawyers are taken seriously at court and that our requests for matters to be withdrawn or discharged are given careful consideration.

Our involvement in the civil justice system has increased quite significantly over the last few years. Noting the fact that besides the normal court stakeholders, we interface very extensively with the private legal profession, it becomes critical that the opposition parties in civil matters view our lawyers as formidable representatives of their clients and strong defenders of their rights. This impression can only be created if our lawyers consistently render quality legal services without fear or favour. In civil legal services this positive image of our lawyers is especially important in settlement negotiations.

### 2.3 Shareholder perspective

Legal Aid SA is a public entity that is wholly funded by government. Our executive authority is the Minister of Justice and Constitutional Development. We are also accountable to Parliament for the funds that we receive.

From a shareholder perspective, government would be interested in ensuring that Legal Aid SA preforms its obligations in terms of its mandate. Any failure in achieving this objective would have negative implications on the sustainability of our organisation, as continued funding cannot be assured to an organisation that fails to achieve its goals. The delivery of quality legal services is therefore very important in ensuring that our shareholder continues to support the work that we do in fulfilling our mandate.

### 2.4 Organisational perspective

Legal Aid SA's mission is to be a leading provider of quality and professional legal services for the poor and vulnerable. In addition to ensuring that we cover all criminal courts in the country, Legal Aid SA has embarked on a programme to increase our coverage of civil work. This extensive work programme requires us to be able to attract and retain experienced and skilled legal practitioners. Building and maintaining a good reputation/brand of our organisation is therefore very important. A critical aspect of building this reputation/brand is to ensure that our service delivery offering is consistently good. The management and monitoring of our legal quality programme is therefore very important for Legal Aid SA.

### **3. Legal quality monitoring challenges experienced by Legal Aid SA**

#### **3.1 The need for greater independent reporting on quality**

The management of legal services delivery in Legal Aid SA has always incorporated a quality management programme. This included both a quality intervention programme and a quality monitoring programme. As part of the quality monitoring programme, all our legal practitioners are required to be periodically assessed by their managers using a standard quality instrument. The results of these assessments are shared with our board of directors.

Noting that these quality assessments are done by the very managers who are responsible and accountable for the quality of legal services at their Justice Centres, it became a case of these managers being “players and referees” at the same time. The credibility of the legal quality scores presented to our Board was also a concern noting its lack of independent assessment. It was therefore important that attention was given to addressing this concern.

#### **3.2 Inconsistency of measurement**

Noting that the responsibility for the assessment of legal practitioners was that of our local Justice Centre managers, this created a problem when scores of different practitioners and Justice Centres were being compared. It was found that different managers assessed their practitioners differently, notwithstanding the fact that a standardised instrument was used. Some managers were more conservative in their assessments whilst other managers were more liberal. It was therefore difficult to make an accurate determination as to which practitioners or Justice Centres had quality control problems.

#### **3.2 Focus on outputs and not outcomes**

Since the inception of our Justice Centre model, a quality monitoring programme was implemented. A standardised instrument was developed in order to conduct these assessments. The primary focus of this standardised instrument was an assessment on quality outputs. However, very little focus was given to an assessment of quality outcomes. This therefore resulted in the assessment process not being appropriately balanced.

### **4. Legal quality assurance monitoring options considered**

#### **4.1 Peer reviews**

The peer review system as implemented in the UK was initially considered as a means of seeking an independent assessment of the quality of legal service rendered by our practitioners. It however became very clear that this would be an expensive option which Legal Aid SA could not afford on a sustainable basis. Further, we were concerned that constituting different peer review panels for different regions of the country would result in the same concern we had with regards to inconsistency of measurement noting that different panels would be responsible for different regions.

#### 4.2 Periodic external reviews by consultants

Noting the need to obtain some form of independent assessment of our quality programme, Legal Aid SA has twice sought proposals from the private sector to conduct independent evaluation of the quality of work performed by our practitioners. This evaluation had to be done by a team of legal practitioners who met minimum experience requirements. The assessments consisted essentially of reviews of practitioner case files. A standardised assessment instrument was developed by the legal consultancy that was successful in obtaining this contract.

The objectives of this external evaluation was achieved in that we were able to obtain an independent evaluation of the quality of our practitioners work. We found that to a large extent the assessments made by this external evaluation team correlated with management's assessment of quality. This finding was important because of the fact that all previous quality assessment reports to our board were based on assessments conducted by local management.

Whilst this method of obtaining an independent evaluation of the quality of our legal services delivery did satisfy our needs at the time, it was nevertheless an expensive option which we could not do very often. Furthermore, the sample of practitioners reviewed by these external consultants was very small. There were also some challenges with regard to the relevant work experience of some consultants on this project and whether it was suited to our predominantly criminal case load.

#### 4.3 Stakeholder feedback

From the time of the implementation of our quality management programme, we have always viewed the feedback from stakeholders as very important. Besides the requirement that our Justice Centre managers arrange quarterly meetings with presiding officers in order to obtain feedback on practitioners' quality, Legal Aid SA has also conducted presiding officer surveys in order to obtain feedback on our quality. However, whilst the feedback obtained was very useful, it was clear that we could not rely exclusively on this method for independent assurance. Stakeholder feedback is nevertheless considered by Legal Aid SA to be an important source of information and therefore will form part of our overall quality monitoring programme.

#### 4.4 Client surveys

Legal Aid SA has tried to obtain feedback from clients on how they perceive the quality of our work. This included requesting clients to complete client satisfaction survey forms at appropriate times in their matters. Because we relied on our lawyers to ensure that this feedback is obtained from clients, we were sensitive to the fact that the integrity of the feedback could not be assured. We have since discontinued this as a method of obtaining client feedback.

Various other forms of surveying clients were also considered including appointing an external company to survey our clients. However, the costs involved in conducting such a programme on a national level were very prohibitive.

More recently, we have implemented a programme to use our call centre agents to telephone our clients and to enquire on the quality of services they received. This is done during their non-peak hours and therefore does not disrupt the normal call centre operations. The feedback obtained as a result of this telephone survey is analysed by managers and interventions are addressed directly with the practitioners who handled their matters.

A common problem cited by clients in civil matters is that they do not receive regular feedback from their lawyers. When these files are subsequently examined, it becomes clear that many clients were indeed given feedback. However, the gap we found was that the expectation of many of these clients was to receive almost daily feedback whilst practitioners only diarised these matters when there was some activity that they needed to attend to.

Whilst we have found client surveys very helpful, and which we want to expand to include surveys of our clients in criminal matters, it is clear that this on its own will not give us a good measure of the quality of services that our practitioners render to their client. It is however a programme that we will continue as part of our current quality monitoring programme.

## **5. The case for a Legal Quality Assurance Unit**

Noting the need for Legal Aid SA to be able to report on the quality of its service delivery programme in a more independent manner, the idea of establishing our own in-house legal quality assurance unit was born. It was felt that this unit should be located within our Internal Audit department rather than being based within operations. This was important in order to ensure that the unit could function independently. Furthermore, the reports generated by this unit would be seen as more credible noting their independence from operations.

In developing the proposal for this unit it was envisaged that only very experienced legal practitioners, under the leadership of a very senior legal manager, would be recruited to serve as legal quality assurance auditors. This was considered to be very important in order to enhance the image of this unit within the organisation. It was important that findings and recommendations that would be made by this unit as part of its normal functioning would be accepted in good faith by our practitioners and managers. In order for this to happen it was important that practitioners viewed these legal auditors as experienced practitioners themselves so that they would more readily accept findings and implement their recommendations.

The idea of having a permanent legal quality assurance unit was also important to improve the consistency of reporting. It was planned that all the auditors would be taken through a programme to ensure consistency in their assessment of case files. This was very important in order to identify gaps in our service delivery programme by an examination of the quality scores assessed by this unit.

Legal Aid SA, in considering the establishment of this legal quality assurance unit, saw this as an opportunity to extend our quality monitoring programme from measuring outputs to also incorporate outcomes. It was felt that legal auditors, who were independent from operations, would be able to more objectively look at the cases as a

whole and assess whether the outcomes achieved for clients in their matters were in keeping with the available evidence presented at court. It was anticipated that this move to outcomes based monitoring would move our practitioners further along the continuum with regard to client focused representation.

## **6. Legal Quality Assurance Unit – Legal Aid SA case study**

### **6.1 Structure and reporting**

The Legal Quality Assurance Unit comprises one manager, six (6) legal auditors and one (1) administrator. Stringent requirements have been specified for each of these positions, including a minimum of 10 years experience in relevant areas of the law. Noting the fact that this unit would be responsible to audit practitioners at both the lower and higher courts for both criminal and civil matters, it was important that auditors were selected to ensure that sufficient skills were available within the quality assurance team to perform the various audits. Therefore, a minimum of two auditors had to be very skilled in civil law noting the fact that approximately 15% of our work is civil. All the legal auditor posts were also graded at levels equivalent to the highest grades for legal production staff in the organisation. In this way, we are assured of attracting and retaining highly skilled legal practitioners to this unit.

The Legal Quality Assurance Manager reports to the Internal Audit Executive, who in turn reports directly to the CEO, and where necessary the Chairman of the Board of Legal Aid SA. On a quarterly basis this unit is required to produce a report to the Board of Legal Aid SA on its quality audit programme. This report must include its audit coverage programme for the quarter, the assessment results obtained by our practitioners, as well as the high frequency findings. They are also required to express an opinion on the quality of the legal services delivery programme implemented by management.

### **6.2 Financial and administrative arrangements**

The budget for the Legal Quality Assurance Unit forms part of the overall budget of the Internal Audit Department. The major component of the budget is the salaries for the auditors and the manager. For the financial year 2013/14, an amount of R5 million has been allocated for the salary budget. This is equivalent to 0.6% of the salary budget for legal staff in the organisation. The only other budget items for which a sizeable provision is required is for travel and subsistence, noting that legal auditors are required to travel to observe practitioners at court, as well as postal and courier services, noting that a large number of case files must be returned to Justice Centres after they have been examined.

This unit has one full time administrator who is responsible for ensuring that selected files are requested from the Justice Centres, as well as returned to them when the audit is completed. The administrator also attends to all other administration issues required by the unit such as procurement, travel arrangements, etc.

### 6.3 Quality assurance coverage

The Legal Quality Assurance Unit is required to provide quality assurance on the legal services rendered by both our internal practitioners as well as Judicare practitioners. The unit is therefore required to assess all internal practitioners over a two year period, as well as 200 Judicare practitioners annually.

On an annual basis, the unit produces a 2 year coverage plan that outlines in broad detail how they intend to achieve their coverage requirements. Noting that we currently have 64 Justice Centres in our national footprint, legal quality audits are therefore planned for 32 Justice Centres each year. This translates to 8 Justice Centre audits per quarter.

A more detailed annual coverage plan is also produced before the start of each financial year which indicates in detail the unit's coverage plan for the full year, including when each Justice Centre will be assessed during the year, as well as the number of practitioners who will be assessed. In compiling this detailed plan, provision is made for legal auditors to be able to review nine (9) files per day (approximately 1 hour per file).

With regard to Judicare, the unit selects the top 200 Judicare practitioners who received the highest number of instructions during the preceeding 12 months, and who were not audited in the preceeding three years.

### 6.4 Quality assurance methodology

Legal quality assurance is performed by doing both case file reviews as well as direct court observations. With regard to case file reviews, the unit manager is responsible for identifying the case files that will be reviewed for each practitioner. The manager obtains a list of all matters that were finalised by the practitioner over the last three (3) to six (6) months. If the practitioner is involved in criminal services delivery the list will only contain matters that were finalised by way of trial or guilty plea.

The manager then randomly selects five (5) files that were finalised by trial and five (5) files that were finalised by guilty pleas. A list of the files of all practitioners selected for the audit is then sent to the manager of the Justice Centre that is being audited. The manager is then given 48 hours to provide proof that all files have been couriered to the unit. Proof of the courier tracking number must be sent to the units's manager within 48 hours. This requirement is strictly monitored in order to ensure that there is no opportunity for files to be "window-dressed" before the audit, thereby increasing the credibility of the assessments that are performed.

Individual legal auditors are provided with the ten (10) case files per practitioner that they are responsible to audit. They then review only six (6) of these files for their formal assessment. The reason why they are provided with ten (10) files when they only need to assess six (6) files is to allow the auditor the flexibility to choose another file should he or she find that the selected file is not appropriate for review or if he or she wants to extend their sample size of files reviewed for any reason.

The auditor reviews each file by reading all the documentation contained in it and then, by using his or her skill, experience and training, he or she makes an assessment of the performance of the practitioner in that particular matter based on a standardised instrument. The assessment is done online on our customised computer system. The auditor is required to make an assessment on each risk area contained in the assessment instrument.

Where findings are identified, the auditor is required to select from a drop down list all the findings that have been identified. If a particular finding is not available on the drop down list, the auditor is able to record this as "other" on the drop down list and then the details of the findings are provided in a comments section. The auditor is required to make a recommendation on corrective measures to be implemented to address each finding. This is recorded on the system once the file is reviewed. Once all the risk areas on the instrument have been assessed, the auditor is then required to make an assessment on whether, on the information/evidence available to the practitioner, the outcome of the case was the best outcome achievable for the client.

Once all the risk areas, including the assessment on the outcomes achieved, have been assessed by the auditor, the computer generates the quality score for that file. The auditor is then required to review this overall file assessment and if in his or her view, after considering the file as a whole, the score is either too high or too low, then he or she may adjust the score. This then becomes the final assessed score for that file.

When the auditor has completed the review of six (6) files for an individual practitioner, he or she then calls up a summary report for that particular practitioner. This summary report will display the assessed scores for all six (6) files, as well as the overall quality score for the practitioner based on an average of the six (6) files. The auditor is then required to provide overall comments to the practitioner on the quality of services delivered by him or her.

Once the auditor submits the assessment summary, the system automatically generates a report which is emailed to the practitioner and his or her manager. The report provides the full details of the review performed by the legal auditor, including the scoring per risk area, the findings and the recommendations. The practitioner and his or her manager are required to consider the report.

If the assessment, including the findings and recommendations, are accepted by the practitioner and his or her manager, then no further action is required by them except to implement recommendations to improve their performance. However, where a practitioner is not satisfied with a particular finding or assessment score, he or she may inform the auditor of their concerns with a view to the auditor reviewing his or her findings/assessment score. The auditor is permitted to amend/adjust their findings/assessments if he or she deems this necessary. The auditor will then provide feedback on-line to the practitioner.

The practitioner then has fourteen (14) days to appeal the assessment. The appeal is directed to the unit's manager who is responsible to conduct the review together with one other auditor who was not responsible for that particular audit. An appeal will be considered if the practitioner failed to achieve the minimum score attached to his or her

position. The decision of this appeal panel is final and there is no other recourse available to this practitioner.

Legal auditors also conduct court observations as part of their review process. Court observation review instruments are utilised for this purpose. The legal auditor first meets with the practitioner to discuss the matters that he has on the roll for the day. He then observes the practitioner presenting the cases during the course of the day. A follow up interview is then held at the end of the court day where the auditor clarifies any issues or queries he has with regards the presentation of the case.

The scoring is then captured on the computer system, including comments on findings and recommendations. The computer system then generates the report which is sent to the practitioner and his or her manager. The same processes to review or appeal the audit is available to the practitioner.

The methodology utilised by the Legal Quality Assurance Unit is reviewed by our Board on an annual basis and refinements are made as and when necessary.

#### 6.5 Quality assurance instruments – focus on outcomes

A standardised legal quality assurance instrument was in operation prior to the implementation of the Legal Quality Assurance Unit. With the establishment of this unit it was decided to refine this instrument so that it better aligns to auditing requirements. This included reviewing potential risks, identification of mitigation measures as well as determining tests for compliance. Separate instruments were designed to assess criminal court coverage as well as civil work. Consideration was also given to weighting the risk areas so that it aligns with the job requirements of practitioners.

Table 1: Risk areas and weights - criminal file review instrument (Refer to Annexure A):

No	Risk area	Weighing
1	Practitioner nor properly consulting with clients	20%
2	Practitioner not properly preparing for court	30%
3	Practitioner not properly presenting the case	20%
4	Practitioner not dealing with file administration and ethics	5%
	Total	75%

Table 2: Risk areas and weights - civil file review instrument (Refer to Annexure B):

No	Risk area	Weighing
1	Practitioner not properly consulting with clients	10%
2	Practitioner not drafting pleadings/notices/affidivats properly & professionally	15%
3	Practitioner failing to attend to correspondence and reporting to clients	10%
4	Practitioner not preparing properly for trial/hearing	10%
5	Practitioner not obtaining instructions on settlement	10%
6	Practitioner not dealing with file administration/ethics/accounting	10%
7	Practitioner failing to enforce court orders/judgments	10%
	Total	75%

Noting that the assessment instruments primarily focused on monitoring outputs with regards practitioner performance, it was considered important that the instruments were refined to include an outcomes based assessment of the quality of services rendered by the practitioners. A weighting of 25% was allocated to the assessment of outcomes.

In criminal cases the outcomes assessment would include the following evaluation:

- the effectiveness of advice given to client
- the outcome of any bail application
- the outcome of matters with regard to the merits
- the outcome of matters with regard to sentence
- case turnaround time

In civil cases the outcomes assessment would include the following evaluation:

- the effectiveness of obtaining the relevant instructions/information/documentation from clients/other parties in order to advance the client's case
- the effectiveness of the advice given
- the effectiveness of drafting/responding to pleadings and other documents
- the outcome of the case
- case turnaround time
- the effectiveness of enforcement (where necessary)

These revised legal quality assurance instruments were shared with the Law Society of South Africa as well as the General Council of the Bar for their input, as well as to ensure that they were aware of our quality management programme. Notwithstanding the fact that no input with regard to the refinement of these instruments was received from our legal professional bodies, their acknowledgement of our legal quality assurance programme, as well as the fact that a similar system does not exist in private practice, was indeed heartening.

These legal quality assessment instruments are used by both the legal auditors as well as operations management. This ensures that everyone has the same understanding of what the quality requirements are and how they will be assessed. On an annual basis, these instruments are reviewed by a team consisting of both legal auditors and operations management to ensure that it better aligns to changing needs and demands.

## 6.6 Use of technology

In order to efficiently run a legal quality assurance unit which is responsible to audit approximately 1000 practitioners annually, it is critical that a computer system is in place to support its operations. Legal Aid SA enhanced its custom built computer system to include a module for the legal quality assurance unit. The system was designed so that the auditor could capture the information pertaining to the audit in real time and all the calculations and reporting would be done by the computer. This ensured that the bulk of the legal auditors time was spent performing audits rather than attending to administrative issues.

## 6.7 Building the image, credibility and respect for the Legal Quality Assurance Unit

Noting the important role that the Legal Quality Assurance Unit could play in improving our legal quality, it was therefore important for the unit to develop an image within the organisation where it is viewed by both our practitioners and managers as champions of legal quality, and individual auditors are seen as knowledgeable, competent, skilled and understanding.

A critical part of building this image was to ensure that suitable and competent legal auditors were employed. In this regard care was taken to ensure that only very experienced practitioners with proven track records of excellent service delivery were considered for his position.

A lot of time was spent initially with the members of the unit to ensure a standardised approach to assessing files. This included hosting a number of workshops where case files were assessed as a team. Care was taken to ensuring that the legal auditors saw themselves as enablers for quality improvement rather than monitors of practitioner quality. All the auditors realised from an early stage that they would be judged by the quality of their reviews and their ability to make meaningful input to practitioners for quality improvement.

During the first year of their establishment, the manager of the unit conducted sessions with Justice Centre Executives at their regional forums to highlight common findings that were identified and how this could be remedied. Further, the engagement between legal auditors from the unit and JC management had developed to the extent that JC managers viewed them as partners in improving the performance of practitioners. Legal audit recommendations are taken seriously and implementation plans are developed to ensure that all recommendations are successfully incorporated into the service delivery programme at Justice Centres.

## 6.8 Key implementation challenges and resolutions

In order to minimise potential teething problems when the unit was established, a decision was taken to appoint the manager of the unit first, and to make this manager responsible to project manage the establishment of the unit, including the appointment of all the legal auditors. This project management methodology proved very effective in ensuring that implementation risks were properly identified and measures were taken to minimise any disruptions. The further decision to ensure that all the legal auditors were appointed at the same time was critical in ensuring the smooth establishment of this unit. This enhanced the development of a good team spirit within the unit. It also assisted with ensuring consistency of assessments done by the legal auditors.

When the unit commenced its operation, it adopted a practitioner focused assessment methodology. This entailed the unit manager randomly selecting practitioners from any of our offices for review. Whilst the unit was able to provide audit reports per practitioner, reports on the quality programme at a Justice Centre level was not possible. Within a year the unit changed to a Justice Centre focused approach where 50% of practitioners from the Justice Centre would be reviewed. Thus, besides being able to give assessment reports per practitioner, the unit was also able to express an opinion on the quality programme at the Justice Centre itself.

Another important change that was implemented by this unit was to more tightly control the receipt of files for review. Initially, the unit requested Justice Centre legal managers to select files of practitioners for review. This resulted in a perception that only the files of cases that were properly done by practitioners were sent for review. This was then changed and the unit manager then selected the files for review and our JCs were requested to submit files within a reasonable time. This resulted in the perception that the files selected were window-dressed before submission for review. Therefore, the unit now manages the timeframes for the receipt of files very closely to address this concern.

The implementation of direct court observations as part of the review of the quality of services rendered by practitioners has proved to very challenging because very often the cases that the auditors plan to observe at court does not take place at court for any number of reasons. Auditors then have to make quick alternative arrangements to view other practitioners so that their time is not totally wasted. In order to address this challenge, our unit is currently considering making use of court recordings of proceedings as a way of assessing the quality of work rendered by practitioners at court. Depending on how effective this method proves to be, it may be used to complement our court observation programme or even replace it.

## **7. Performance report – Legal Quality Assurance Unit**

### **7.1 Quality coverage and assessment statistics**

The Legal Quality Assurance Unit reviews all categories of legal practitioners in the organisation.

The table below details the numbers of practitioners that were audited during the last two financial years.

**Table 3: Audit Coverage Report**

	<b>CA's</b>	<b>PA's</b>	<b>CIVIL PA's</b>	<b>HCU PA's</b>	<b>MANAGERS</b>	<b>Total</b>
<b>FY 2011/12</b>	345	488	76	57	140	1106
<b>FY 2012/13</b>	366	399	37	33	80	915

Legal Aid SA has approved quality standards and targets that practitioners operating in the different courts have to achieve. The quality standards that practitioners must achieve are included in the quality assessment instrument. Justice Centre managers and legal auditors use these standards to monitor, mentor, coach and review practitioners.

Each category of practitioner is required to achieve a quality target score. This target varies based on the court that the practitioner serves, as well as the level of the practitioners. Therefore, candidate attorneys who serve only in the district courts have a target of 80% whereas admitted practitioners serving in the regional courts have a

higher target of 85%. The highest target of 90% is allocated to high court practitioners, civil practitioners and legal managers primarily because of the type of matters in which they represent clients, as well as the fact that the potential for prejudice to their clients is the highest.

The table below details the average quality scores that was achieved by each category of practitioner in our organisation. All categories of practitioners obtained average quality scores that was higher than the target.

Table 4: Average quality scores per practitioner category

	CA's	PA's	CIVIL PA's	HCU PA's	MANAGERS
<b>FY 2011/12</b>	86%	90%	89%	93%	91%
<b>FY 2012/13</b>	86%	89%	88%	93%	91%

The table below details the percentage of practitioners per category who achieved the quality targets for the last two financial years. Practitioners who do not achieve their targets are provided individual support to ensure improvement.

Table 5: Practitioners who achieve quality targets per practitioner category

	CA'S	PA's	CIVIL PA's	HCU PA'S	MANAGERS
<b>FY 2011/12</b>	94%	95%	97%	88%	79%
<b>FY 2012/13</b>	95%	93%	95%	85%	79%

In addition to legal auditors conducting independent reviews of practitioners, all legal managers at our Justice Centres also conduct quarterly reviews as part of their supervision and performance management programme. Both these scores, ie the legal auditors scores as well as local managers scores, are continuously correlated to determine variances. This assists our local managers to give their staff more accurate assessments of their quality as well as to address gaps long before they are identified by legal auditors. Generally, there has been a very good correlation between the scores of the legal auditors and those of our legal managers.

## 7.2 Dealing with poor performers

Noting that our legal quality management programme is very much institutionalised in our organisation, it is not surprising that the vast majority of our legal practitioners achieve the quality standards and targets that are set for them. A small percentage of practitioners (approximately 5%) however do not achieve our targets.

These practitioners then fall under the oversight of our Regional Offices where the Regional Legal Manager works with the local Justice Centre manager to ensure that the recommendations of legal auditors are properly implemented and that the supervision and support programme at the Justice Centre is adequate. All these practitioners are then assessed by the Legal Quality Assurance Unit after six (6) months and if the quality has not improved, then the Justice Centre managers are required to commence performance management processes which could result in these practitioners being dismissed if no significant improvement are noted.

### 7.3 Key findings – criminal legal services delivery

Noting that all assessments are recorded on our computer system, which includes the recording of all findings that are made in every file that is assessed, we are able to extract the high frequency findings directly from our computer system. The following were the top five findings in criminal files as at the end of the 2012/2013 financial year:

- i. Failing to record all the material advice given to the client;
- ii. Failing to obtain copies of the charge sheet or a summary thereof;
- iii. No evidence of legal and factual analysis of the case;
- iv. Failing to keep comprehensive trial notes;
- v. Consulting in full on the merits only on the trial date.

### 7.4 Key findings – Civil legal services delivery

- i. Failing to record material advice given to the client relating to the merits/ procedures/ alternatives;
- ii. Failing to keep clients informed on the progress/finalization of the matter;
- iii. Failure to adequately consider the merits of the case before proceeding/defending the matter.
- iv. Inaccurate recording of activities on the file covers.
- v. Copies of all correspondence/pleadings/important documents not kept on file.

## **8. Lessons learnt**

The establishment of our Legal Quality Assurance Unit has resulted in some valuable lessons that we have learnt. This includes the following:

8.1 In order to render sustained quality legal services to clients, a formalised quality management programme must be institutionalised within the organisation, and elements of this service must be incorporated into its culture programme.

8.2 To improve the credibility of reporting on quality of services delivered, quality assessments must be conducted by persons independent of operations management. The location of this unit within our Internal Audit Department increased this perception of independence.

8.3 A Justice Centre approach rather than a practitioner approach to conducting reviews increases the usability of reports generated by the unit.

8.4 Strictly managing the selection of files to be reviewed and timeframes for the receipt of these files from Justice Centres improves the confidence in the assessment reports that are produced by the unit.

8.5 Practitioner acceptance of assessment results is increased where the legal auditor is regarded as more senior or experienced.

8.6 The use of file review assessment instruments facilitates a consistent understanding of quality standards required by the organisation and plays a significant role in ensuring adherence to quality requirements by legal practitioners.

8.7 The incorporation of an outcomes component in the assessment instrument has greatly improved the assessment process and has focused practitioners on the need to achieve positive results for their clients when obtainable.

8.8 Whilst file reviews are effective in monitoring levels of preparedness and the performance of practitioners, this should be supplemented with direct court observations of practitioners in order to improve the credibility of reporting on quality.

8.9 Practitioners generally perform better during court observations than on file reviews.

8.10 The effectiveness of a quality assurance unit is greatly increased when it is supported by a computer programme that facilitates on-line reviews and automatic reporting.

8.11 There is a positive correlation between effective Justice Centre supervisors and the quality of performance of their subordinates.

8.12 The use of *pro forma* forms encourages practitioners to favour form over substance. Practitioners therefore attend to the formal requirements as contained in the *pro forma* forms but this does not necessarily translate to improved quality.

8.13 A formalised quality management programme, including independent verifications on quality, greatly increases stakeholder perceptions and confidence of the organisation.

## **9. Conclusion**

The establishment of our Legal Quality Assurance Unit has played a significant role in improving our legal quality management programme. An important contribution of this unit was the revision of our quality review assessment instruments to include an assessment on quality outcomes achieved by practitioners in their cases. This has led to practitioners realising that they cannot only attend to the basic requirements as per our quality standards, but that achieving positive results for their clients when this is possible is also critical. Client focused delivery of legal services has therefore been greatly improved by our monitoring of outcomes in matters.

This unit has also played a positive role in ensuring greater acceptance and confidence by internal and external stakeholders with regard to our reporting on quality, especially noting that they are completely independent from our operations management. However, notwithstanding this independence, they have still been able to position themselves as partners in our quest to improve quality rather than as a “big brother” monitoring over our quality. This has resulted in greater acceptance by our practitioners and managers of their findings and recommendations, which will ultimately result in the improvement of quality services delivery to clients.

Legal Aid SA acknowledges the tremendous value-add that this unit has brought into our organisation. We are further of the view that this model of an independent internal assurance provider of our legal quality delivery programme is effective, affordable and sustainable.

## LEGAL AID South Africa

## PRACTITIONER LEGAL QUALITY AUDIT - FILE ASSESSMENT - CRIMINAL

Auditor

## SCORING FRAMEWORK

	1	Poor (< 60%)
Practitioner:	2	Below Average (≥ 60% ≤ 69%)
	3	Average (≥ 70% ≤ 79%)
Position:	4	Good (≥ 80% ≤ 89%)
	5	Excellent (≥ 90%)

No	Potential Risks	No	Mitigation Measure	No	Test for compliance	%
A	Practitioners not properly consulting with clients (20%)	1	Should take instructions on bail where necessary and comply with S60 of the CPA	a)	Consultation notes should include the custody status of the client, grounds why bail is opposed, clients expectation and instructions plus full details on the grounds on which application for bail would be based (except where bail was finalised previously), practitioner's advice on success to align expectation with reality.	
		2	Consultation notes should canvas all issues relating to the case.	b)	Consultation notes must be relevant and contain instructions on material aspects and must be signed by the client.	
				c)	Consultations in criminal matters must be sufficiently probing/relevant to cover/exclude all possible charges and defences thereto and to obtain all facts relating to the charge/defense from the client's perspective.	
				d)	Record all advice given to client on material aspects of the case and trial processes/alternatives as well as client's instructions thereon.	
				e)	Advice given must be relevant and appropriate to the merits and applicable law.	
				f)	Follow-up consultation and perusal/familiarisation with the file/docket when taking over from another practitioner to ensure consultation is comprehensive and practitioner is properly prepared.	
				g)	Statement of client and defence witnesses should be taken before evidence is given	
				h)	Consultation notes on mitigation (after conviction) must cover all relevant aspects of sentencing and not only client's personal details.	
B	Practitioners not properly preparing for court (30%)	3	Efforts should be made to finalise the matter without going on trial/plea	i)	Evidence of efforts made to resolve the matter before reaching trial stage.	
		4	Consultation with clients should always take place before the trial date	j)	Investigate possible conflict of interest a.s.a.p. after acceptance of the instructions so that conflict can be dealt with immediately	
				k)	Consultation must be done before the date of trial. Any reason for deviation should be fully recorded.	
		5	Obtain and peruse docket & charge sheet plus obtain instructions thereon	l)	Complete copies of docket and charge sheet (or summary thereof) should be obtained before date of trial	
				m)	Evidence of legal and factual analysis of the case must be on file,	
				n)	Evidence that the content of the docket was discussed with the client and instructions obtained thereon.	
		o)	Motivation for use of expert witnesses on file, if applicable			
C	Practitioner not properly presenting the case (20%)	6	S112(2), S115 & S220 statements done in accordance with clients instructions	p)	S112(2), S115 & S220 statements must be in accordance with clients instructions	
		7	S112(2) statement should contain all the elements of the offence	q)	S112(2) must contain all the elements of the offence and the facts on which it was based.	
				r)	s112(2) plea must only be done if the facts support a guilty plea	
		8	The proceedings should be recorded	s)	Evidence of pro-active steps taken to avoid unnecessary/unreasonable delays in finalisation of matters	
				t)	Comprehensive trial notes should be kept of evidence, arguments, applications and judgement. Trial notes should be the practitioner's own concise contemporaneous recordal of the proceedings.	
				u)	All material elements of the case must be argued	
				v)	Reason for closing the client's case without presenting evidence should be motivated and be reasonable.	
9	Proceedings should be finalised in the best interest of the client	w)	Record advice on merits in LTA and petition together with instructions & follow client's instructions.			
D	Practitioners not dealing with file administration and Ethics (5%)	10	Files should be neat and orderly	y)	LA1 and LA13's must be fully completed, signed and dated	
				z)	File should be tidy, chronological and with subfolders	
		11	The history of the case should be recorded in the file	aa)	Recording of activities on file cover must be accurate	
				bb)	All documents should be dated on the actual day and the content completed when it is relevant (no pre or post dating/completion)	
				cc)	Copies of all correspondence and court documents must be on file (including S112(2), s115, s220 etc.)	
		12	The pre-printed file cover should be completed accurately and fully	dd)	Consultation date must be recorded on the file cover or the consultation notes	
				ee)	When taking over a file from another practitioner the date, reason and previous practitioner must be noted on file cover.	
		13	Ensure that all the activities on the file are captured on AI	ff)	MAR must be completed fully and correctly	

Annexure A

No	Potential Risks	No	Mitigation Measure	No	Test for compliance	%
E	Realistically Achievable Outcomes Obtained (25%)	14	Effectiveness in obtaining the relevant information/documentation from client and other parties in order to advance the client's case.	gg)	Refer to a, b, c, f, g, h, j, l, n and o above. Was the practitioner effective in obtaining all the relevant and necessary information and documentation to place him in a position to effectively present his client's case? In this regard emphasis must be placed on the timeliness, relevance and comprehensiveness of the information obtained, as well as the effectiveness with which this information was used to advance client's case.	
		15	Effectiveness of advise given to client	hh)	Refer to d and e above. The advice given must be relevant and appropriate to the facts and applicable law. It must also be appropriately timed and relevant to the stage and developments in the case.	
		16	Outcome of the BAIL application	ii)	Refer to a, s, t, u, v and w above. The evidence gathered and adduced in support of the bail application must be relevant and sufficient for the type of bail application to be brought to adequately advance the client's case. What was the impact of the practitioner on bail? How effective was the work done in achieving the client's (reasonable) expectations including expectations relating to the bail amount and conditions? Was the client prejudiced in any way by the services rendered or not rendered, for example: > disclosing too much of the client's case; > poor timing of the bail application; > delays in bringing the application > poor presentation of the evidence; > ineffectively challenging evidence opposing the application. > unjustified abandonment of bail applications	
		17	Outcome of matter - Merits	jj)	The practitioner should have added value to obtaining the best possible verdict for the client. Unfavourable results should not in any way be attributable to the performance of the practitioner. Emphasis should be placed on the impact of the practitioner on the result obtained.	
		18	Outcome of matter - Sentence	kk)	The practitioner should have added value to obtaining the best possible sentence for client in the case of a conviction. Unfavourable sentences should not in any way be attributable to the performance of the practitioner. Emphasis should be placed on the impact of the practitioner in obtaining the best possible sentence for client.	
		19	Case turnaround/finalisation	ll)	Refer to f, g, l, j, k, l, m, n and s above. The effectiveness of the practitioner in ensuring that delays are minimised and the case is finalised as speedily as possible.	
<b>Overall Score</b>						

**LEGAL AID South Africa**  
PRACTITIONER LEGAL QUALITY AUDIT - FILE ASSESSMENT - CIVIL

**FRAMEWORK**

Justice Centre:	1	Poor (< 60%)
	2	Below Average ( $\geq 60\% \leq 69\%$ )
Practitioner:	3	Average ( $\geq 70\% \leq 79\%$ )
	4	Good ( $\geq 80\% \leq 89\%$ )
Position:	5	Excellent ( $\geq 90\%$ )

No	Potential Risks	No	Mitigation Measure	No	Test for compliance	Percentage Achieved			
A	Practitioners not properly consulting with clients (10%)	1	Consultation notes should canvass all issues relating to the case.	a)	Consultation notes (independent from pleadings and the paralegal's notes) must be relevant and contain instructions on material aspects and must be signed by the client.				
				b)	Record all advice given to client on material aspects of the case and procedures/alternatives as well as client's instructions thereon.				
				c)	Where a matter has been stale or inactive for a long period of time the practitioner needs to obtain fresh/new instructions from his client and these needs to be recorded in writing.				
B	Practitioners not drafting pleadings/notices/affidavits properly and professionally (15%)	2	Pleadings/notices/affidavits should be drafted professionally, accurately and contain all the essential elements of the case	d)	The parties should be correctly cited				
				e)	Relief claimed must be "pleaded and prayed" for in pleadings/notices/affidavits in accordance with the clients instructions.				
				f)	Affidavits must be commissioned in accordance with the provisions of Act 16 of 1963, as amended, and the regulations thereunder.				
		3	Pleadings should be served and filed timeously	g)	The pleadings/notices/affidavits should be drafted to disclose an action/defence which is available in law and supported by the facts.				
				h)	Pleadings/notices must generally be drafted and/or served and/or filed timeously and more specifically within the procedural time limits and before prescription, where relevant.				
				i)	Pleadings and affidavits must be properly signed and completed before serving and filing				
4	All relevant documentation must be considered before drafting	j)	Summons must be forwarded to Sheriff who has jurisdiction to serve same						
k)	All relevant documentation must be considered before drafting and where applicable annexed to the pleadings.	5	Correspondence should be drafted professionally	l)	All correspondence should be date stamped and actioned within a reasonable time.				
				m)	All correspondence must be responded to timeously				
6	Regular written/telephonic progress reports to clients	n)	Clients must be kept informed of the progress/finalisation of the matter.	o)	Consultation and preparation notes as evidence of consultation and orientation of the client/witness for trial				
							7	Attend to pre-trial consultations/orientation with clients and witnesses.	p)
D	Practitioners not preparing properly for trial/hearing (10%)	8	Practitioner pursues cases with poor merits (factual analysis)	q)	Evidence of research relevant to the case/issues in dispute, when needed.				
						9	Research done where and when needed	r)	Evidence that Pre-trial conferences/subpoening witness/discovery/indexing etc should be attended to where required
11	Prepare and serve heads of argument where necessary	t)	Settlement instructions must be obtained in writing and the settlement agreement must be in writing and signed by the parties.						
				E	Practitioners not obtaining instructions on settlement	12	Take instructions and obtain client's mandate to settle and scope of same		

## Annexure B

No	Potential Risks	No	Mitigation Measure	No	Test for compliance	Percentage Achieved
F	Practitioners not dealing with file administration, Ethics and accounting (10%)	13	The pre-printed file cover should be completed	u)	LA1 and LA13's and other documents/forms required by LAG must be properly and fully completed, signed and dated	
		14	The chronological history of the case should be recorded on the file cover	v)	Recording of activities on file cover must be accurate and chronological Consultation dates must be recorded on the file cover or the notes	
		15	Keep notes on the proceedings	w)	Comprehensive trial notes should be kept of evidence, arguments, applications and judgement.	
		16	Files should be neat and orderly	x)	File should be tidy, chronological and with subfolders	
					Incoming correspondence must the date stamped	
					Copies of all correspondence/pleadings/important documents must be kept on file	
		17	Ensure that files are properly updated on AI	y)	MAR must be completed fully and correctly	
		18	Draw bills and costs timeously after finalisation, where appropriate	z)	Costs must be recovered where a costs order was made in favour of the client and/or the opposition tendered costs and/or it was prayed for in the papers	
19	Matters should be finalised as soon as is reasonably possible and without any undue delays to conclude the client's mandate.	aa)	Evidence of pro-active steps taken to avoid unnecessary/unreasonable delays in finalisation of matters and to conclude the mandate.			
20	Observe all ethical rules of the profession.	bb)	Any adverse costs orders and/or comments made by judiciary relating to conduct of the practitioner			
G	Practitioners failing to enforce court orders/judgments (10%)	21	Ensure that the court order/judgment is enforced where appropriate and reasonably possible	cc)	Proof of steps taken in terms of the relevant legislation to enforce court orders/judgments. Reason(s) for non-compliance should be recorded on the file.	
H	Realistically Achievable Outcomes Obtained (25%)	22	Effectiveness of obtaining and applying the relevant instructions/information/documentation from client/ other parties in order to advance the client's case.	dd)	Refer to a,i,m,n,o,q,t. The practitioner's effectiveness in obtaining and attending to relevant information/instructions/documentation should have contributed to the advancement of the client's case.	
		23	Effectiveness of the advice given.	ee)	Refer to b,p,t. The advice given must be legally sound and contribute positively to the resolution of the matter.	
		24	Effectiveness of drafting/responding to pleadings and other documents.	ff)	Refer to d,e,f,g,h,i,j,k,l,m,n,p,q,r,s,t,w,x. The quality of documents drafted by the practitioner, as well as his effectiveness in dealing with documents received from his opponent, should advance the client's case.	
		25	Outcome of case	gg)	The practitioner should have added value to obtaining the best possible result for the client. Unfavourable results should not in any way be attributable to the performance of the practitioner. Emphasis should be placed on the impact of the practitioner on the result obtained.	
		26	Case turnaround/finalisation	hh)	The effectiveness of the practitioner in ensuring that delays are minimised and the case is finalised as speedily as possible.	
		27	Effectiveness of enforcement (where necessary)	ii)	Refer to z and cc. Cost orders and judgments in favour of the client should be fully and effectively enforced	