

**Quality Assurance Working Group**

**Responses from The Institute of Advanced Legal Studies  
and the Legal Services Commission to  
The Law Society's concerns about peer review.**

## **Quality Assurance Working Group:**

The Law Society's concerns about peer review and responses from the Institute of Advanced Legal Studies and the Legal Services Commission

### **Introduction**

#### **Law Society General Concerns**

Peer review was originally conceived of as a quality improvement mechanism but its significance has now developed well beyond this as the LSC have the power to impose contract sanctions against providers who do not achieve a specific peer review rating. The 'punitive' potential of peer review will be increased if the LSC proceed with Best Value Tendering (BVT) as it is proposed that a minimum rating category 3 will be an essential requirement for being able to tender for a contract.

Whilst Peer Review grows in significance for providers, there are also growing concerns about the fairness and objectivity of the peer review process. This paper presents a brief outline of those concerns.

#### **IALS Comment**

1. The Peer Reviewers see their role as being involved in the maintenance and assurance of quality and bringing up the level of quality where this is necessary. They are blind to the purpose of any individual review, but are very aware of the context which affects them as it does all other practitioners. Reviewers and IALS are pleased to answer any issues of concern about the process and attempt to remedy any problems which are found.

#### **LSC Comment**

2. Peer Review is one of the tools the LSC use to monitor provider performance. During the original consultation on peer review we outlined the uses of peer review including its use as a gateway assessment to contracting schemes where providers may have to demonstrate a defined level of competence, peer review for BVT is one such assessment.
3. The LSC is committed to listening to the concerns and issues raised by the profession to ensure that confidence in peer review, as an objective and fair process is maintained. If through the course of the Quality Working Group review specific changes are identified as necessary to ensure the continued integrity of the peer review process we will take steps to ensure these are incorporated into any new LSC contracting process.

### **Specific Concerns**

#### **TLS Concern**

*Family law may be one legal aid category but it consists of a number of specialist areas such as care proceedings, domestic violence and ancillary relief issues. The concern is whether a generalist family peer reviewer has the skills to review specialist cases and whether a specialist peer reviewer has the skills to review cases outside of their specialist area. To what extent are peer reviewers particular skills matched up with the providers case profile?*

**Response from the IALS:**

4. Family law is a good example of this problem, though it is beginning to appear in other legal aid categories as well. In short, we listen to our reviewers in terms of what is necessary. At the point at which they tell us it will no longer be possible to have generalist family lawyers carry out reviews we will have to break down the subject into further sub categories. We have tried not to do this until now because of the further complexity of arranging peer reviews under such circumstances. Where it is clear from a provider's set of files that a specialist family lawyer is needed we do attempt to organise such a specialist. Any peer reviewer is able, once having commenced a review, to decide that they do not have sufficient expertise to complete that review and they can ask for a specialist to carry it out.

**Response from the LSC:**

5. For some Family peer reviews it may be necessary to allocate reviews to peer reviewers who are specialists in an aspect of Family work. For example, if a Family peer review file sample contains predominantly children matters because the organisation being reviewed specialises in this work (rather than a mixed sample of domestic violence, finance, divorce and children files), a peer reviewer who is on the Children Panel will be allocated to conduct the review. The LSC hold details of peer reviewers who are on specialist panels, this information is used to allocate peer reviews to specialists where the need arises. In practical terms, if 8 or more of the first 15 files on a Family file sample file, relate to a particular type of work (e.g. children work in Family), the peer review will be allocated to a peer reviewer who is a member of the relevant specialist panel (e.g. Children panel). All family peer reviewers are aware of this process and as a final safety net, all family panel members understand that they should not review a specialist providers' work, if they do not have the requisite specialist qualifications.
6. It should be noted that the LSC contracts are for the whole of the Family category, we do not contract separately in specialist categories within family law. We expect providers to deliver the full range of advice services in the family category.

**TLS Concern**

*There are concerns about the consistency of peer review as between peer reviewers. We are aware that IALS have systems for monitoring peer reviews for consistency but there may be issues as to how robust this system is.*

**Response from the IALS:**

7. Consistency is a crucial issue in independent peer review and this answer is therefore presented in extenso. Consistency is addressed in the system of independent peer review through attention to methods of selection, training and monitoring of reviewers and the setting of objective criteria for assessment.

**The problem**

8. Formal and informal legal education is varied and quite individual. There is a considerable variety in the approaches and content of "Qualifying Law Degree" courses taught at Universities. Many do not take a Qualifying Law Degree but have the advantage of a non-law degree and a one year conversion course before they take their Legal Practice Course to qualify to become a solicitor. Each of these courses can be different in approach and may have some differences in content.

9. Trainee solicitors will “sit in with”, and experience directly, the work of a number of solicitors, probably between 3 and 10. During this last experiential and formative period they will be significantly moulded into particular forms of practice approaches. These can be quite individual, depending on the nature of the practice and the tendency of the trainee Supervisors with whom they interact. After this, as qualified solicitors, they may practice for the rest of their working lives with little critical interaction from colleagues or supervisors. The nature and the result of such training is therefore highly individual and very varied.
10. A consistent approach among those carrying out Peer Review is therefore both a difficult and crucial part of the process. This was well recognised in the first attempts at Peer Review undertaken with the assistance of the Law Society in 1994 - "Such measures of quality as exist are contingent on the assessors' (clients or peers) notions of what constitutes quality and these remain largely subjective and unarticulated." (Sherr, Moorhead and Paterson (1994) at p 82)
11. Concern for consistency is therefore shown throughout the new peer review process. Consistency is sought through selection of appropriate peer reviewers, training and assessment and criteria use to ensure a common starting point, monitoring to spot any worrying patterns of marking behaviour, ongoing training and continuous monitoring to ensure consistency throughout.

### **Selection**

12. Peer reviewers are selected based on a level, depth and range of personal experience of specialisation, and supervision in the required area of work. This ensures that they have experience of fairly assessing the work of a number and range of other fee earners, preferably in different contexts and that they are fully aware of any issues arising in the practice area. Evidence of open-mindedness to alternative methods and practices is also critical in selection.
13. All successful peer review applicants are subjected to a rigorous short listing procedure, an interview and test review and must pass a Peer Review of their own work at the level of at least a 2 (Competence Plus), before beginning the training process.
14. Selection at these high standards is aimed at ensuring that all peer reviewers are starting from a strong experiential background, and share similar personal expectations of the levels of competent work which can be expected in their specialism.

### **Training**

15. If selected the new peer reviewer undergoes two full days of training. The training is led by the Institute of Advanced Legal Studies, with input from existing and experienced peer reviewers and some operational information from the Legal Services Commission. When this form of training was begun in 2002-4 representatives from the Law Society, Advice Agencies Alliance and subject specialist groups were invited to attend and comment and have time alone with new peer Reviewers. During this training new peer Reviewers are given an understanding of the history and reasoning behind the peer review methodology to ensure as full an understanding as possible of the process. They are briefed on the criteria used during a peer review and the 5 point rating scale. Each criteria and each of the 5 levels of quality (from Failure in Performance (5) to Excellence (1)) are discussed and new peer reviewers have the opportunity to raise questions and discuss issues. They are then given the opportunity to apply these criteria and ratings to some real files. These exercises are performed in

groups of new and existing peer reviewers. Although the accent is towards carrying out this work individually, the discussion following between all those present begins to ensure more of a consistency of both application and understanding. There is a rigorous discussion of any differences between the members of the panel, with the aim of agreeing how they would all wish to decide even on minor issues. There is an active training session in writing a short report and coming to an overall grade and an explanation of the overall position that providers are given the benefit of the doubt if there are differences in opinion.

### **Assessment**

16. Upon completion of these first two days of training the new peer reviewer performs two full peer reviews on sets of actual provider files (often referred to as their first Consistency Exercises). These files have already been reviewed by experienced peer reviewers. Upon completion of the Consistency Exercises, the reviews conducted by the experienced and new peer reviewers are compared by a senior panel member or by IALS to see to what extent the same file grades and provider grades were awarded. They also check that similar issues are raised and treated in a similar manner. The new panel member will also have the opportunity of discussing the reviews with the experienced peer reviewer concerned. Upon satisfactory completion of two such consistency reviews the peer reviewer will then join the panel. Some new reviewers fit into the system fairly quickly and their first reviews are immediately found to be consistent with those of other reviewers. Where this does not happen, new reviewers are given further reviews to carry out and further training and discussion with more senior reviewers until they achieve consistency. Such reviewers might also then be monitored closely in their early reviews.
17. In the rare case that they do not achieve consistent ratings after (say) 4 or 5 attempts, they may be dropped from the panel.

### **Criteria**

18. The peer review criteria which are used by the peer reviewers to assess each file (and were drafted by the first set of peer reviewers together with the researchers who worked on "Quality and Cost") were designed themselves to encourage a consistent approach by ensuring that the same key issues form the basis of all reviews. In the initial 1994 test which is reported in "Lawyers – The Quality Agenda" wide ranging views were expressed until the criteria were drafted, thus narrowing and more clearly articulating the field of enquiry and assessment. The peer review software requires that they be considered in relation to each file and then overall scores are assessed for each provider.

### **Monitoring**

19. The peer review process is monitored constantly in two ways: through the continuous monitoring and review of peer review reports, and through two forms of statistical analysis of peer review results. There is also the important corrective effect of representations from providers when grades below competence are being awarded.
20. When each peer review report is completed it will be examined and monitored by IALS or a senior panel member (SPM). IALS or the SPM will examine the report both to check that it adequately justifies the provider grade that has been awarded and that the report has been well enough written to assist the provider in understanding clearly the reasons behind any particular grading. If there are any concerns with the grading or the Report these will be returned to the peer reviewer for further work or comment. This provides a mechanism which attempts

to ensure that issues are dealt with in a consistent way by all peer reviewers and serves both as a check to prevent individual providers being sent an unjustified grading, and as a feedback mechanism giving the peer reviewer an indication if he or she is giving inconsistent marking on specific issues, or not sufficiently explaining or justifying a particular grade or issue noted.

21. Where new panels of reviewers are being built in new subject categories the views of the first peer reviewers are allowed to form a nucleus of agreement before joining other reviewers into the group. This is effected by organising that all of the first set of reviewers (e.g. the first 4 reviewers in a particular subject category) all review the same sets of providers' files until they are gaining agreement across the group on how to deal with different issues and how to mark particular approaches. This can articulate and cement a coherent view into place which is then easier to agree with additional reviewers when they join the group.
22. After the first two years of Peer Reviewing an overall consistency exercise was carried out to monitor whether all peer reviewers in crime could be consistent in reviewing the files of 2 out of 3 particular providers. A remarkable consistency in grading was found and this was also an instructive exercise through which was learned the importance of keeping all reviewers informed through six monthly updates and having ample opportunity to agree any differences.
23. The continuous process of monitoring can now involve an initial peer reviewer, an SPM and someone from IALS in working on and agreeing a provisional Report for a 4 grade. Subsequently when representations come in, a further Peer Reviewer and a second IALS person or SPM will be involved in considering the Representations together with the original files, and then validating the final report. This process, involving a whole cadre of reviewers and validators, also tends to ensure a larger consistency of approach across the system.
24. IALS also prepares quarterly reports detailing a number of statistics for individual peer reviewers, and highlighting any areas of concern raised by those statistics. These statistics are provided to peer reviewers at six-monthly update training sessions.

The statistical measures used are:

25. "Grade distribution". This presents the proportion of providers being awarded each grading (e.g. the percentage of providers receiving a Grade 1 etc). This is calculated for the whole collection of peer reviews, for subject panels and for individual reviewers where a sufficient number of reviews has been carried out. This allows IALS to check that the grades awarded are spread appropriately and allows comparisons across the panels and within panels.
26. "Average Provider Grade": This is a simple measure of the average grade awarded by a reviewer across all his or her reviews. It allows for a quick and easily interpreted comparison with other peer reviewers, the subject panel and the whole body of peer reviewers.
27. "Self Consistency": This is the extent to which the average provider grades awarded differs from the average grade across the sets of 15 files reviewed. Whilst peer reviewers have some discretion to award provider grades higher or lower than the average of the file grades, it is expected that they will not do so often significantly more in one direction than the other (i.e. not mark providers up more frequently than marking them down or vice versa). This measure allows IALS to identify peer reviewers who may be using their discretion inappropriately.

28. "Inter-Reviewer Consistency": This is the difference between the average provider grade of the panel or peer reviewer and the average provider grade of all peer reviews. This measure allows IALS to identify peer reviewers and panels who appear to be applying a harder or easier standard when awarding provider grades.
29. "Hard and Easy marker boundaries": For both Self Consistency and Inter-reviewer consistency descriptive statistics (mean and standard deviation) are calculated taking into account all scores for all peer reviewers. These are then used to calculate a band 1.3 standard deviations above and below the mean score for each measure (In a normal distribution approximately 80% of scores would be expected to lie within this band, and 10% would be expected to lie above and below the bounds of this range respectively). Scores falling outside of this band are flagged for attention.
30. Where a peer reviewer is thus identified as a hard or soft marker on any measure this will be raised at the next training session. Where a peer reviewer has been identified as a "hard" marker s/he will not be used to validate any grades of 4 or 5, and any of his or her reviews which come up with a 4 or 5 will have to be repeated by a less harsh reviewer before the mark can be fairly assured. Discussions are held with both hard and soft markers with a view to bringing them closer towards consistency of marks. A promise has been made that no provider will suffer as a result of having been marked down by a harsh marker.

#### **Ongoing training**

31. Peer review subject panels meet every six months. These meetings are attended as far as possible by all peer reviewers carrying out reviews in the subject area.
32. At these update meetings peer reviewers are given a presentation on the statistics described above and are also given individual statistical reports showing their own grades. At the presentation areas of concern are highlighted and areas for discussion suggested. Peer reviewers who have been highlighted as soft or hard markers receive feedback on this issue.
33. Peer reviewers can also put on the agenda for discussion any issues which have caused them concern or difficulty. These can include, for example any differences of opinion between reviewers and SPMs arising out of validations or responses to representations, specific work approaches and practices, or changes in legislation or funding. This provides a forum for the panel to clarify issues and formulate a consistent approach. At the update meeting there will usually be an exercise during which the panel members will look individually and collectively at some files or reports and discuss their approaches, again to ensure consistency.
34. These update meetings are therefore vital in guiding peer reviewers to stay within a statistically acceptable range of marks, as well as encouraging a common approach to marking. In this way they address both quantitative and qualitative aspects of consistency.

#### **Specific questions about "benchmarking"**

35. In addition the LS have asked for "information about how the benchmarks are set, how peer reviewers assess against the benchmarks and what controls are in place to ensure that all peer reviewers are operating to the same standards."
36. As will be seen the approach adopted has been to provide a set of criteria to guide the peer reviewers through the review, along with a 5 point scale of ratings which is supported by indicative descriptions for each rating (these are included

in the Appendix below). These descriptions are advisory rather than prescriptive. This allows the accommodation of diverse approaches rather than setting an ideal approach against which providers are marked. The intention is to bring up the standard of inadequate work, not to standardise all work.

37. Controls to ensure peer reviewers operate to the same standards are described more particularly in the paper above.

### **Summary**

38. Peer review is a complex process rather than an isolated file marking exercise, as can be seen especially in its constant approach to consistency.
39. The strength of the approach of Independent Peer Review to consistency is the diversity of its mechanisms. It uses selection, training and assessment to encourage and ensure a commonality of approach to the task; and use of criteria as well as ongoing training to maintain this approach, and monitoring as both a safety net and a training tool. The individual process of monitoring, validation and representation response adds to the overall system of selection, training and instrumental objectivity with the intention of ensuring across the board consistency.

### **TLS Concern**

*There is also a question about consistency over time. Will the standard be absolute or relative to the prevailing level of work at any given time. In other words will the standard fall as work carried out reflects the limitations imposed by fixed fees and generally declining remuneration rates.*

### **Response from the IALS:**

40. The question of whether the standards are absolute or relative is interesting and difficult, but it is one which the reviewers have had to discuss often in the last 2 years. It is their decision how they grade. Some might say that a dichotomy is inappropriate. The reviewers adopt a slightly more nuanced position, maintaining reference to the rating guidelines whilst incorporating an understanding of the environment in which practice occurs. This ability to show an understanding of practice issues has always been considered to be one of the strengths and justifications for using current practitioners. Statistically it seems the peer reviewers decide on what they see in front of them on the files they review and do not obviously change their view of quality with changes in funding policy. Politically they will voice their views in a very similar way to their peers.

### **TLS Concern**

*Problems arising from the LSC's refusal to accept appeals against category 3 findings. At the present time this may not have any real practical significance, although it could do in the future, for example in a competitive bid round. Would it be preferable to just have 'pass' or 'fail' outcomes?*

### **Response from the LSC**

41. The LSC allows representations against a peer review result where the outcome may impact on a provider obtaining or retaining an LSC contract. Currently providers are required to obtain a peer review rating of 3 or above to satisfy the quality requirements for entry to BVT. As a result representations are currently accepted on peer review ratings of 4 (Below Competence) or 5 (Failure in Performance).

42. Currently in effect there is a pass/fail result to peer review (either PR3+ is a pass or a PR4- is a fail). When the representations process was originally introduced the LSC was considering setting the quality threshold at a peer review rating of 2 (Competence Plus) or above as part of the Preferred Supplier process which necessitated representation on peer review ratings of 3 or below. Given the shift in the LSC's purchasing strategy to competitive tender (quality status required - PR3) representations are not considered necessary for PR3s as there is no practical significance when balanced out with the cost of representations and peer reviewer resource that it takes up.
43. Last year, the LSC looked into the benefits of changing the process from a 5-scale rating to pass/fail – a recommendation was made to keep the current 5-scale rating for the following key reasons:
- Providers would not be able to evidence improvement in quality (since previous review)
  - The LSC would not be able to quality assess candidates to become peer reviewers
  - Flexibility would be lost to take into consideration higher quality providers in future contracting systems.
  - The costs of changing the process from 5-scale to pass/fail would outweigh the benefits/costs of maintaining the existing scheme or the cost incurred in changing the existing scheme.
44. If in the future the LSC does require a higher quality rating (PR2) from their providers (there are currently no plans to do this), they will be given the opportunity to make representations on PR3s. It is hoped that with time, we will see an overall improvement in the PR ratings, as providers incorporate the learning from their first peer review and make use of the improving quality guides and workshops that are available. Initial research from IALS shows that improvements are made on second reviews.

#### **TLS Concern**

*Potential conflict of interest situations under BVT. BVT is likely to increase the number of firms seeking out of area contracts. In this situation the current arrangement for peer reviewers to come from a different geographical area to the provider may be insufficient to prevent a conflict of interest arising, as it will probably be open to firms to bid for out of area contracts.*

#### **Response from the IALS:**

45. Prior to a review, providers are given a list of potential reviewers. They are asked to indicate any reviewers with whom they would have a conflict and they may address this issue as they wish. It will be open to the provider to exclude a peer reviewer based in an area in which they are bidding.
46. Where a provider from outside the peer reviewer's area has expressed an intention to bid within the peer reviewer's area, this information will not be known to the peer reviewer. Therefore the peer reviewer will not be aware of a conflict of interest (although the firm being reviewed may), and their marking should be free of bias from this source.
47. If every reviewer will have a conflict with every other supplier as a result of national contracts we will need to consider how the presumption of conflict rules should operate and will take advice from the Law Society and others as to how to handle this problem.

**TLS Concern**

*Peer review measures past rather than current performance, and the longer the gap between peer reviews, the less the likelihood of the file sample being representative of current work.*

**Response from the IALS:**

48. Peer review considers closed files. In previous research it was found that different lawyers carried out different tasks at different stages of a case. Although some tasks are more time or event bound, others are not. For this reason, and the need not to intrude upon live files, the files, which are requested, are all closed, but they should be files closed within the past year. It would be possible for providers with large numbers of matters to be asked to provide files which had been closed in the last six months, but this may not be appropriate for particular subject categories or for particular providers. We do not believe that the time lag involved currently is a problem in assessing the work of a provider. If working practices have changed within a year or particular staff have gone, it is possible for a provider to make representations (in relation to a below competence mark) which outline the situation. In any event a peer review rating is currently considered valid by the LSC for three years.

**TLS Concern**

*Under the BVT proposals it is envisaged that for new firms there would be a provisional peer review based on the peer review rating of the supervisor or senior partner's previous firm. This could have some inappropriate consequences in situations where for example, a competent practitioner leaves a firm with a poor peer review rating to set up a new firm, or where an incompetent practitioner leaves a firm with a high peer review rating to set up a new firm.*

**Response from the LSC:**

49. The BVT proposals explore possible ways to allow new competition into the market. The points raised regarding the LSC's latest proposals/suggestions are noted, it is difficult at this stage to see how the entry criteria can be 100% infallible, but at the same time allow new entrants into the market place. The LSC welcomes further debate on this and is keen to work with the QWP to obtain other alternative proposals.

**TLS Concern**

*Peer review does not measure the quality of advocacy which could be the main element of the service to the client, particularly in criminal cases. This may not be a problem if advocacy issues are addressed elsewhere in the quality matrix, e.g. through accreditation.*

**Response from the IALS:**

50. Peer reviewers are not present in the lawyer's office when they interview clients, at the police station, at court when talking to the other side or the prosecution and they are not present in court or tribunal when advocacy occurs. Reviewers do not overhear telephone calls of the lawyers concerned, nor can they assess their bedside manner. It would be both intrusive and expensive to set up a process which captured all the live work of the practitioners concerned. However, the files are a very good record and should be a record of what has happened in any matter. Because files are shared between more than one practitioner, practitioners go on holiday, go into hospital or even go under a bus, it is essential that a proper record is kept of what happens on any file. Proper information must also be presented to clients to explain to them what is happening and to provide

them with advice on the law and procedure relating to their matter. It is clear from a file when advocacy has been properly prepared and when good results are consistently obtained across a number of files. It should be noted that advocacy is likely to be separately assessed under a different system in the future.

## APPENDIX

Extract from Legal Service Commission (Nov 2005) Independent Peer Review Process.

[http://www.legalservices.gov.uk/docs/civil\\_contracting/Independent\\_Peer\\_Review\\_Process1105.pdf](http://www.legalservices.gov.uk/docs/civil_contracting/Independent_Peer_Review_Process1105.pdf)

### Definitions of the Ratings

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

2.18 Following the review of a sample of files for a supplier, an overall rating (using the 1-5 rating) is given for the quality of legal advice and work. A separate rating is given for the value for money assessment.<sup>6</sup>

2.19 The ratings are as follows:

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

2.20 The ratings definitions describe the work of the supplier as reviewed by the peer reviewer over a number of files.

2.21 Where a supplier’s work is rated as Below Competence (4) or Failure in Performance (5), this indicates that the work falls below that required by Clause 3.2 of the General Contract<sup>7</sup> Standard Terms, which states that:

*“You must perform all Contract Work and exercise your Devolved Powers in a timely manner and with all reasonable skill, care and diligence. You must perform your obligations to record and report data accurately. Your Claims must be true, accurate and reasonable.”*

2.22 The definitions of the ratings are as follows:

#### **Excellence (1)**

2.23 Indicators of Excellence in the standard of work include:

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

### **Competence Plus (2)**

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

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

### **Threshold Competence (3)**

2.25 Threshold Competence is the standard that meets that required by Clause 3.2 of the Contract Standard Terms.

Indicators of Threshold Competence in the standard of work include:

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

### **Below Competence (4)**

2.26 Peer review demonstrates that contract work has been conducted below the standard which clients are reasonably entitled to expect from a solicitor, and in breach of Clause 3.2 of the Contract Standard Terms.

Indicators of Below Competence in the standard of work include:

- Information is not being recorded or reported accurately.
- Communication with the client is sometimes of poor quality.
- The advice and other work is inadequate.
- Some cases are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or other work is sometimes inadequate.
- There are lapses below the required standard.

### **Failure in Performance (5)**

2.27 Peer review demonstrates that contract work has been conducted substantially below the standard which clients are reasonably entitled to expect from a solicitor and substantially below that required by Clause 3.2 of the Contract Standard Terms (a fundamental breach as described in the contract). Additionally, there has been at least one major or complete failure to conduct work to this standard.

Indicators of Failure in Performance in the standard of work include:

- Information is not being recorded or reported accurately.
- Communication with clients is often of poor quality.
- Cases in general are not being conducted with reasonable skill, care and diligence.
- The timeliness of the communication, the advice or work is often inadequate.
- There is a detrimental service to clients, or there is no meaningful service at all, or there is a service that leads to potential prejudice for the client.