

Institution: University of Strathclyde		
Unit of Assessment: C18 - Law		
Title of case study: Evaluating and Enhancing Quality in Legal Professionals through Peer Review		
Period when the underpinning research was undertaken: 2001-2020		
Details of staff conducting the underpinning research from the submitting unit:		
Name(s): Prof Alan Paterson	Role(s) (e.g. job title): Professor	Period(s) employed by submitting HEI: 01/09/1984 – present
Period when the claimed impact occurred: August 2013 – December 2020		
Is this case study continued from a case study submitted in 2014? No		
<p>1. Summary of the impact</p> <p>Based significantly on Paterson’s research, scheduled peer review programmes were established to evaluate the quality of legal aid work across the UK from 2002. These quality assurance programmes continue to date, with 55,053 cases from over 6,000 legal aid firms reviewed across the UK since August 2013, leading to enhanced quality of service for legal aid recipients who rely on the service to access necessary legal support and representation. With the success of the UK models and the rising value placed on quality assurance of legal aid services internationally, Paterson has been invited to present and advise on the introduction of peer review models extensively, directly contributing to its adoption in the Netherlands, New Zealand, Moldova, Ukraine, and China.</p>		
<p>2. Underpinning research</p> <p>Research undertaken by Professor Alan Paterson, University of Strathclyde, and Professor Avrom Sherr, University of London, commissioned by the Legal Services Commission (England and Wales), and published in 2001, tested alternative measures of quality assuring the work of contracted legal aid firms, e.g. cost, client satisfaction, model clients and outcomes, for the first time on a substantive scale. Peer review was revealed as the clear winner in terms of efficacy, logistics and expense [R1]. The fieldwork and analysis established the reliability and validity of peer review (with appropriate criteria, marking frameworks and training of assessors) and established for the first time that it was the best available means for assessing the quality of legal aid work. This resulted in its adoption as the method of choice for evaluating the quality of legal aid work in England and Wales in 2002. Paterson took the initial lead on measuring quality, and shared the responsibility for the research into, and eventual format of the peer review, equally with Sherr.</p> <p>In 2003, Paterson carried out further research at the request of the Scottish Legal Aid Board (SLAB), using professional standards/criteria devised by expert practitioners, harnessed to the scoring system tested previously [R1] and applied by trained peers to a random cross section of legal aid files. This pilot study demonstrated that file-based peer review was a viable quality measurement process for Scottish public defenders [R2]. In late 2003, when SLAB followed England and Wales in introducing quality assurance measures of its public defenders, this work was used to justify and underpin the introduction of peer review for civil legal aid practitioners in Scotland. Since 2006, Professor Paterson has researched and monitored the output of the peer reviewers in Scotland to ensure that the variation in their assessments falls within acceptable limits for reliability purposes [e.g. R3]. In 2011, his ongoing monitoring research work, having established the robustness of peer review as a quality measure encouraged SLAB and the Law Society to develop civil peer review in a risk based direction and to extend it to criminal legal aid lawyers. Professor Paterson’s continuing work, which evidenced that peer review was not being used to erode the supply base but rather to drive up standards [R4], contributed to SLAB’s decision to extend peer review to children’s legal aid, with the first round of reviews starting in 2017.</p>		

Since 2015, Paterson has devoted considerable energy in studying peer review as a quality assurance measure for legal aid internationally. In 2017 Paterson was the primary author of a paper covering recent developments in peer review, especially in China [R4]. It also examined the unexpected attraction of UK-style peer review in China and in Georgia as a vehicle for changing the culture of lawyering from a focus on the courts to a more client-centred approach through careful drafting of the professional standards against which the lawyers' files would be assessed in those countries. In 2020, Paterson conducted a global analysis of 13 jurisdictions where peer review programmes had been established in the last twenty years [R5]. Through national summaries and scrutiny of the various peer review formats, Paterson presented a 'blue print' for how to introduce a peer review programme to any jurisdiction worldwide.

3. References to the research (Strathclyde affiliated authors in bold)

- R1** Moorhead, R., Sherr, A., Webley, L., Rogers S., Sherr, L., **Paterson, A.**, and Domberger, S. (2001) *Quality and Cost*. London: The Stationery Office. [Available from HEI on request]
- R2** **Paterson, A.** (2007) 'Peer Review and Quality Assurance'. *Clinical Law Review*, 13(2), 757–871. [Available from HEI on request]
- R3** Sherr, A., and **Paterson, A.** (2008) 'Professional Competence, Peer Review and Quality Assurance in England and Wales and in Scotland' *Alberta Law Review*, 45, 151 (9). <https://bit.ly/2l1a0cf>
- R4** **Paterson, A.** and Sherr, A. (2017) 'Peer Review and Cultural Change: Quality Assurance, Legal Aid and the Legal Profession', *ILAG conference proceedings, Johannesburg*. <https://bit.ly/3esYtOP>
- R5** **Paterson, A.** (2020) '*Inception Report for UNDP: The international experience of applying peer review of legal services in the public sector and civil society institutions.*' Report submitted to the United Nations Development Programme. [Available from HEI on request]

Notes on the quality of research: **R1** and **R5** were commissioned by the Legal Services Commission and the United Nations Development Programme respectively based on Paterson's research expertise in this field. The findings in **R1** formed the basis of the researchers' recommendations to adopt peer-review, which were accepted and implemented by the Legal Services Commission. Similarly, the research which was subsequently published in **R2** (peer-reviewed ahead of publication) contributed to the adoption of peer review as the quality assurance method for Scottish legal aid.

4. Details of the impact

As a direct result of the research published in **R1** and **R2**, scheduled peer review programmes have been conducted for legal aid services in Scotland since 2003 and in England and Wales since 2002. These services are used by those who cannot afford legal costs of eligible cases, including but not limited to: individuals or families at risk of abuse or serious harm, such as domestic violence or forced marriage; individuals or families at risk of homelessness; individuals accused of a crime that carries a prison sentence; individuals seeking a remedy in terms of the Human Rights Act especially immigration and asylum cases. Continuation of peer review programmes to date represents ongoing **enhancement of the quality of legal aid service in the United Kingdom**, with associated benefits for legal aid recipients. The success of these UK programmes, subsequent international research and extensive engagement activities have enabled Paterson to support the **introduction of peer review programmes internationally as a method of quality assurance for legal aid services**.

Enhancement of the quality of legal aid service in the United Kingdom

The underpinning research '*played a highly significant role in the decision of the legal aid authorities in the UK to implement peer review as the primary [quality assurance] vehicle*' [**S1**], with the former CEO of the Scottish Legal Aid Board (SLAB) stating that the research '*established the robustness of peer review as a quality measure and... enabled SLAB and the Law Society*

(assisted by funding from the Government) to determine to refine civil peer review with a greater emphasis on client risk and to extend it to all Criminal legal aid lawyers and now all children's legal aid practitioners' [S2]. In England and Wales, since 2014, 31,521 cases from 2,506 legal aid firms have been reviewed [S1]. In Scotland, 12,276 cases from 1,637 civil practitioners and 9,167 cases from 1700 criminal law practitioners have been assessed since August 2013 [S2]. Additionally, after Scotland began the peer review process for Children's Legal Aid in 2017, 2089 cases from 188 practitioners were assessed by January 2020 [S2].

Paterson provides ongoing monitoring and assessment of each of the Scottish programmes for SLAB [S2]. Every year, Paterson monitors the distinction and fail rates of each reviewer and uses these as a basis for reviewer training workshops. The data are also presented to the Law Society and SLAB Quality Assurance Committees. Through this process, Paterson supports the consistency and validity of the peer review quality assurance programmes in Scotland. Evidence from these reviews that standards continued to improve between 2013 and 2020 includes: an increase in the number of 'excellent' or 'competent plus' scores in criminal cases; the proportion of final and special reviews remaining steady in civil peer review during challenging times for legal aid providers financially; and an increased use of dialogue with those reviewed ('continue for comment') even where the lawyer is likely to pass [S3]. For England and Wales, the Quality Assurance Consultant to the Legal Aid Agency confirms that *'ongoing monitoring of the reviews demonstrates that the quality of legal aid continues to improve over time'* [S1].

These reviews form a comprehensive dataset, which directs further improvement by demonstrating the comparative strengths and weaknesses of legal aid practitioners across 20+ aspects of their legal work, ranging from effectiveness of communication with clients, the accuracy and appropriateness of the advice given, and levels of preparation and type of outcome achieved. Using these data, the Legal Aid Agency for England and Wales regularly publishes guidance on common issues identified through peer review and how to improve the quality of provision for legal practitioners in the areas of Crime, Housing, Family, Mental Health and Immigration and Asylum [S4]. The latest editions of these guides were all published in the current REF period and are intended to *'support those wishing to achieve the highest levels of quality of legal advice and work.'* Similarly, in June 2018, 6 months after the peer review began for Children's Legal Aid in Scotland, the Scottish Legal Aid Board published a summary of areas of good practice and areas where improvement is needed, in order to *'give confidence to those who recognize their own good practice and [allow] others to learn. This, in turn, improves the publicly funded service provided to clients.'* [S5]

Indeed, the 350,000 persons a year who apply for or receive legal assistance in Scotland, England and Wales benefit from providers whose competence is pro-actively checked. According to the Legal Aid Agency Consultant: *'Through this peer review process, the competency of legal aid lawyers is checked and client recipients benefit from effective legal assistance... peer review, unlike a complaints programme, identifies systemic problems and focuses on client-centred lawyering, thereby ensuring that client care and client communications are actively monitored whilst maintaining and enhancing overall standards of performance.'* [S1]

Introduction of peer review programmes internationally as a method of quality assurance for legal aid services

With the success of the UK model, international bodies such as the European Union, United Nations and Council of Europe, came to see quality assurance as central to legal aid programmes. Quality of legal aid services is now mandated in EU Directive 2016/1919 and was listed as the number one priority for states in the 2016 UNODC Global Study on Legal Aid [S6]. As a result the UNODC commissioned the Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes, which Paterson was invited to co-author with Miri Sharon, International Consultant for the UNODC. The Handbook serves as *'a practical guide for policymakers and*

practitioners for planning and implementing measured to ensure, monitor and constantly improve the quality of legal aid services' [S6]. The electronic version had 4,482 full downloads and 8,000 views or downloads in its first few months. The hardback edition was published in English in 2020, with planned translations into Chinese, Russian and Spanish [S7]. By early 2020, the Handbook had already been used as a basis for UN training workshops in Indonesia, and had been added to the package of essential reading on access to justice for all UN field missions by the Department of Peacekeeping Operations [S7].

As a result of the significance placed on the original research and its impact in the UK, Paterson's expertise has been requested to support the introduction of peer review programmes internationally. Case studies of China and Ukraine are presented below, though similar impact has occurred in:

- Moldova, where the National Aid Council of Moldova introduced peer review of legal aid lawyers' files based on the Scots model in 2015, following Paterson's delivery of peer review training for a pilot in 2011-12. [S8a]
- Georgia, where Paterson and Sherr initiated a pilot peer review programme, funded by the United Nations and USAID, and trained peer reviewers in 2016. Paterson and Sherr also hosted delegates from the Georgian Legal Aid Service on visits to Scotland and London to learn about UK-style peer review programmes. [S8b]
- New Zealand, where UK style peer review has been implemented as a quality assurance measure since 2017, drawing on Paterson and Sherr's research as a guide. [S8c]
- The Netherlands, where Scots-style peer review was adopted in Asylum legal aid firms (2008) following a presentation by Paterson, and then extended to Mental Health (2009) and Social Security (2012). Most recently, peer review was extended in 2020 so that all members of the Dutch Bar (not just legal aid members) must adopt one of two quality assurance methods: intervision or Scots-style peer review. [S8d]

China

As part of the EU funded China – EU Access to Justice programme (Sept 2013 -2017), Paterson, in collaboration with Professor Sherr, advised on the introduction of a civil legal aid peer-review system to China. The vital role played by the researchers in developing this system is summarised in the final report of the Programme:

'Quality assurance has been identified as one of the top priorities in China's legal aid development strategy... Through a series of meetings and technical exchanges facilitated by the Programme, two British quality assurance experts [Paterson and Sherr] shared their experiences in successfully introducing and operating a quality assurance mechanism called Peer Review... Through an intensive and collaborative process, the peer review criteria used in the jurisdictions of England and Scotland were adapted so that they would be suitable for use in China...' [S9]

In March 2015, Paterson and Professor Sherr delivered a three-day training workshop in Henan, 1 of the 3 provinces where the criteria were initially trialled. This workshop focused on providing training to the first cohort of reviewers and demonstrating how to train subsequent cohorts of reviewers on a cascading basis. Between 2015 and 2017, Paterson and Sherr continued to provide training workshops as the trial was extended to 15 further provinces in 2016. By 2017, 130 peer reviewers had been trained and the Chinese Ministry of Justice decided to implement the peer review system across the whole country [S9]. Paterson and Professor Sherr developed a peer review toolkit to support implementation. The toolkit provides an 'A to Z' of the steps and institutions required to introduce and run effective peer reviewing modelled on the UK approach; 3350 hard copies were distributed to key national stakeholders and 32 provincial legal aid centres in 10 provinces, and then stakeholders in all provinces electronically [S9].

Ukraine

In 2016, as part of evaluation of the current legal aid programme in Ukraine for the Council of Europe, Paterson was invited to contribute to an assessment of existing quality assurance measures in Ukraine, leading to a recommendation for introduction of a peer review programme [S10]. Subsequently, the Council of Europe funded Paterson (2016-2018) to advise the Ukrainian legal aid agency (CCLAP) in the formulation of their peer review proposals based on the established models in the UK [S10]. A Ukrainian delegation visit to Scotland in 2018 to see the Scots model was followed by a delegation to see the English model in 2019. Drawing on these visits and the advice of Paterson on international developments in quality assurance, aims of peer review and process, criteria, costs and benefits of implementing peer review, the CCLAP proposed to introduce a pilot project in criminal and civil cases in 2019 to improve the quality standards of free legal aid. This led to the President of Ukraine issuing a decree to *'improve the quality standards of free legal aid by introducing a mechanism for assessing the quality of legal aid using a peer review tool'* and proposals put to the Parliament to amend legal aid law in December 2019 to include peer review as the mandated mechanism for quality assurance. In 2020, Paterson was contracted by the United Nations Development Programme to establish the framework for a pilot peer review programme for the 2,000 staff attorneys employed by CCLAP [S10]. Development of this pilot programme was delayed due to COVID-19, but implementation began in September 2020 and was successfully completed by December 2020.

5. Sources to corroborate the impact

- S1** Corroborating statement from Quality Assurance Consultant to the Legal Aid Agency, dated 29 October 2020, and appended peer review figures for England and Wales from the Peer Review and Providers Record Manager, Legal Aid Agency.
- S2** Corroborating statement from former CEO, Scottish Legal Aid Board, dated 20 July 2020, and emails from associated administrators confirming review figures and appended peer review figures for Scotland
- S3** Collated 2019 Annual Reports on the Quality Assurance Scheme for Civil Legal Assistance and Criminal Legal Assistance.
- S4** Collated 'Improving you Quality' Guides for Crime, Housing, Family, Mental Health and Immigration and Asylum
- S5** Six month report by the Children's Quality Assurance Committee, Scottish Legal Aid Board
- S6** Handbook on Ensuring Quality of Legal Aid Services in Criminal Justice Processes: Practical Guidance and Promising Practices.
- S7** Corroborating statements from Crime Prevention and Criminal Justice Officer, United Nations Office on Drugs and Crime, dated 21 November 2019 and 11 December 2019.
- S8** Collated corroborating sources for impacts in Moldova, Georgia, New Zealand and the Netherlands
 - a. Statement from Director of Programs, Legal Resources Centre from Moldova, dated 17 July 2020.
 - b. USAID, Georgia. EMWI/PROLoG supports Legal Aid Services of Georgia to learn about UK best practices. 29 June 2016.
 - c. Statement from Manager at Ministry of Justice, New Zealand, dated 17 July 2019.
 - d. Statement from Former CEO of the Dutch Legal Aid Board, dated 20 July 2020.
- S9** Corroborating statements from Senior Programme Manager of China-EU Access to Justice Programme, dated 11 March 2020 and 2 March 2020, and appended China-EU Access to Justice Programme Highlights report.
- S10** Corroborating statement from former Director of CCLAP, Ukraine, dated 17 July 2020.