



Independent
Quality Assessment
of Legal Services

IMPROVING YOUR QUALITY

A guide to common issues identified through Peer Review

Welfare Benefits

Third Edition
August 2010

Foreword to the First Edition Improving Your Quality

A guide to common issues identified through peer review

The focus of the delivery of legal aid is firmly on the provision of consistently good quality services for clients.

The introduction of the Peer Review process provides a unique opportunity with access to a wealth of information directly related to the quality of legal advice and information given to clients. It allows us to identify areas of good practice and areas in need of improvement.

We are pleased to introduce this edition of 'Improving Your Quality - Welfare Benefits', which is intended to give the profession access to peer review findings and help support those wishing to achieve the highest levels of quality of legal advice and work.

The guide makes available common quality issues identified by the Welfare Benefits Peer Reviewers. Derived from the entire body of peer review reports, analysis has concentrated on those issues frequently contributing towards lower ratings at Peer Review. Each issue is divided into 3 parts:

- A brief description of why the issue has been identified as important.
- The process by which an organisation can identify if the quality concern affects their work and advice.
- Outline suggestions on activities/methods which could assist improvement.

These suggestions for making improvements are not suggesting a standard approach. Nor are they an exhaustive list; they are only some of the ways that improvements can be made. Your organisation may have other ways of resolving the issues raised in the guides, it is not our intention to invalidate those approaches.

Some of the suggestions may also lead to a more general debate concerning standard setting, and the best approaches to dealing with specific quality of advice issues for Welfare Benefits work. We continue to welcome the opening up of the world of legal competence to such scrutiny and debate.

Avrom Sherr

Director of Institute of Advanced Legal Studies

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1. Are full and comprehensive histories taken from clients?

Why does this matter?

- Without a full history, there is a strong possibility the client will not receive advice that deals with all relevant issues and not just the 'presenting problem'. Incomplete personal and household information may also prevent the adviser from making appropriate referrals and identifying benefit maximisation opportunities.

How can I check this on my files?

- Are details of the client and the client's household noted on the file?
- Is the advice given to the client specific to a single issue?
- Are details of the client's health recorded and any potential benefit entitlement identified?
- In appeal cases, has a history of previous claims, medical examinations and appeals been noted?

What will help?

- Develop a pro-forma to trigger questions relating to household details including income and health details, type of accommodation and details of all persons living in the household.
- Ensure that the health of all members of household is considered.
- Develop a pro-forma on common areas of appeal (DLA, IB, ESA, HB overpayments/backdating), which include taking the client's claim history.
- Develop and use benefit check/maximisation pro-formas.

“Are details of the client and the client's household noted on the file?”

2. Do advisers demonstrate comprehensive legal knowledge?

Why does this matter?

- If comprehensive legal knowledge is not demonstrated, the competence of the adviser is in question. The client deserves to have someone acting on his or her behalf that is a specialist in that area of the law. This means that the adviser should know how to access and advise on the law relating to this area.

If this isn't apparent, it may be concluded that the adviser is only acting as a post box between the client and the DWP or the Local Authority. Not every file will have the law spelt out as the issue may be factual rather than legal but in appropriate cases there should be references to the law (for example on a case of backdating of benefit, overpayments, decisions on cohabitation, habitual residence test /European Community Law etc).

How can I check this on my files?

- Do letters, telephone calls, attendance file notes to clients or opposing parties (DWP) refer to the law as it relates to the client's circumstances (not just general info sheets)?
- Is there evidence of legal research, references to handbooks, law/regulations etc on the file?
- Do letters and telephone calls to the other side refer to the legal test/criteria?
- If there are written submissions/appeal notes, do they show an obvious reference to the law?

What will help?

- Ensure relevant handbooks (including the annotated legislation) are available and are used.
- Ensure that inexperienced advisers have access to telephone support lines and consider referrals if necessary.
- It may be useful, especially for inexperienced advisers, to attend tribunal user group meetings or liaison meetings with DWP/Local Authority.
- Ensure advisers have access to good quality training from appropriate providers.
- Ensure advisers have access to IT and relevant websites such as Disability Alliance, OSSCSC and Rightsnet.

- Ensure advisers have time to regularly update their knowledge by subscription to relevant publications.

“The client deserves to have someone acting on his or her behalf that is a specialist in that area of law.”

3. Do clients receive comprehensive written advice and regular updates on the progress of their case?

Why does this matter?

- The provision of comprehensive written advice to the client demonstrates the adviser's competence and thoroughness in confirming instructions and advice to the client. If advice is not confirmed in writing, there is a chance that the client may misunderstand oral advice. Providing written advice also allows the adviser to double-check that he or she has dealt with all the issues in the case. Keeping the client updated is important as the client may be unaware of how long their case will take or what happens during the case. It also ensures the adviser is continuing to assess the merits of the case.

How can I check this on my files?

- Does correspondence give clients comprehensive advice about their particular situation?
- Are clients kept updated regularly as the case progresses?
- Are the merits and progress of the case regularly assessed (i.e. on receipt of schedule of evidence, expert's report etc) and any important developments communicated to the client?
- Are clients advised in writing of all relevant time limits (for example, time limit for appealing, time limit for returning the appeal questionnaire)?
- Are clients advised in writing of the risks involved in appealing decisions where they are in receipt of an award (as the tribunal may reduce the client's existing award)?

What will help?

- Re-assess letters to ensure they are meaningful to the client's circumstances.
- Develop pro-formas to ensure advice is comprehensive; a checklist or questions, which will trigger identification of potential benefit entitlement.
- Develop a pro-forma or review procedure for appeal cases to ensure consideration of all the evidence in the case and to assess the merits of the case.

“Does correspondence give clients comprehensive advice about their situation?”

4. Is there evidence of pro-active work on a client's behalf?

Why does this matter?

- Clients go to an adviser because they are not able to achieve what they want and need on their own. If a client feels no progression is being achieved on taking advice, then he/she will feel frustrated. A good adviser uses appropriate methods to progress a case and, if progress is not possible, advises the client of the reasons.

How can I check this on my files?

- Is there a pattern of clients not being updated on the progress of the case?
- Is there a pattern of clients ceasing to give instructions?
- Has the work of the adviser been solely reliant on correspondence, with little evidence of using the phone when it might progress matters?
- Is there a pattern of “no replies” being received and only “chaser” letters being sent, without any attempt to pursue via the phone being made?
- Is there a pattern of missed reviews or “no action” reviews?

What will help?

- Provide advisers with examples of when it is relevant to use the phone rather than rely on correspondence as an appropriate tool for progressing a case. Provide advisers with information on different strategies which can work (such as complaints systems, ombudsman schemes, MP's etc).
- Ensure a system of file reviews and record of late reviews is accessible to both adviser and supervisor.
- Ensure key inactivity periods are flagged up via an appropriate case management system.
- Ensure that the client is regularly updated on the progress of their case, even if no action is being taken, and an explanation is provided for the lack of any progress with a likely timescale for further progress.

“Ensure key inactivity periods are flagged up via an appropriate case management system.”

5. Does the gathering of evidence display any substantial legal input by the adviser?

Why does this matter?

- Commissioning of evidence for appeals or supersessions demonstrates the adviser's knowledge of the law and their ability to draw out the relevant issues for an expert to give an opinion on. The requests should be geared to an application of the law with reference to the client's particular circumstances.

How can I check this on my files?

- Do letters / notices of appeal refer to the legal criteria or are they standard and general?
- Are letters of instructions to experts general and non-specific to the client's circumstances or to the legal criteria?
- Do attendance notes display an ability to take a history and deal with the relevant criteria?
- Has the client had the criteria put to them? Were notes made on how the criteria were met?

What will help?

- Keep stocks of examples of letters displaying all this, as 'aid' rather than precedent, for inexperienced advisers.
- Develop pro-forma for advisers to trigger relevant questions for different areas of law.
- Consider taking witness statements from clients.

“Develop pro-forma for advisers to trigger relevant questions for different areas of law.”

6. Has the adviser displayed a thorough working knowledge of the appeal process? Do submissions to first-tier tribunals demonstrate appropriate legal input?

Why does this matter?

- The client's appeal can be helped by a thorough and detailed submission, which does not just reiterate the facts but shows an understanding of the legal issues and deals with the evidence to be considered by the first-tier tribunal. This may be in addition to or instead of personal representation.

How can I check this on my files?

- Has the schedule of evidence been considered and assessed for issues of evidence/fact etc?
- Have expert reports been commissioned (if appropriate) and do the requests demonstrate the adviser's knowledge of the benefit at issue?
- Are there written submissions on the file or notes on the content of the submission if personal representation is to be provided?
- Do the submissions/notes set out the law relevant to the appeal including if appropriate relevant case law?
- Do the submissions refer to relevant case law?
- Do the submissions/notes deal with the evidence within the schedule? Is the relevant law applied to the evidence?

What will help?

- Provide advisers with examples of good submissions illustrating the above.
- Ensure that advisers have the opportunity to receive training on appealing decisions and tribunal representation from appropriate providers.
- Ensure that advisers have the opportunity to observe first-tier tribunals (both represented and unrepresented).
- Ensure that all advisers have at some time the opportunity to represent at a range of first-tier tribunals.

“Are there written submissions on file?”

7. Following the hearing, has the client been advised on the consequences of the first-tier tribunal decision and assisted with the next steps?

Why does this matter?

- The consequences of a first -tier tribunal decision are often lost on a client and therefore need advising on to ensure the client is fully informed of options and assisted with arrears or knock on benefit claims.

How can I check this on my files?

- Is there evidence of advice to the client on the outcome of the first-tier tribunal hearing?
- Is there evidence of follow-up work (where appropriate) such as ensuring arrears of benefit are paid and checked for accuracy?

What will help?

- Confirm any advice on the consequences of the tribunal's decision to the client in writing.
- Use tribunal checklists when considering if further action is required (for example, appeal to the Upper Tribunal, fresh claims).

“Confirm any advice on the consequences of the first-tier tribunal’s decision to the client in writing.”

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