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Core Indicators of Quality- Seven Steps to Competence Plus



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Introduction

- Whilst no two Peer Reviewers express views in exactly the same way, a comparison of **all reports** shows that the **same broad comments** are made time and again.
- It is reasonable to infer that **these recurring issues** are regarded as **key indicators of quality**, and that how well (or badly!) they are addressed in each file sample largely determines the rating the supplier is given.
- We will now look at seven of these, together with the type of comments made about them in real Peer Reviews...



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Say it in a Letter!

- Peer Review has a serious limitation. We cannot observe your advocacy or ‘people handling’ skills, the advice you give, or your powers of persuasion, at first hand. The nearest ‘proxy’ we have is to look at how you express yourself in correspondence.
- At some inner London firms, that have to rely heavily on outside agencies and Counsel, the only opportunity caseworkers often get to make contact with the client is by letter.
- Not surprisingly, therefore, **quality of correspondence**, especially with the client, **tops the list** of comments most frequently found in Reports
- **Failure to confirm advice in writing**, especially **at the outset** of cases, is the single **most commonly** found ‘**Major Concern**’ in all Crime Peer Reviews completed to date.



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Say it in a Letter! Continued

- What are P.R.'s looking for? : -
- **Timely, accurate letters appropriate to the client's level of understanding which are case specific**
- **Confirmation** at the outset of each case of **reasoned** and **robust advice**, especially **on plea**, and, depending on the circumstances, on **what has to be proved**, the **issues, strengths and weaknesses**, **venue**, and **what the client and caseworker each need to do** to get the best result.



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Say it in a Letter! Continued...

“Although there was evidence that the strength of the prosecution case had been analysed, this was not communicated to the client who was left to pursue a hopeless defence right up until the day of trial.’

“ There was a fundamental weakness, apparent to some degree on every file, to adequately confirm advice in writing, especially at the outset of cases”



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Say it in a Letter! Continued..

“An early, well composed case-specific letter was sent to the client at the outset of each case in which the instructions and advice were accurately confirmed, the strengths and weaknesses assessed, and setting out what the client and caseworker each needed to do to bring about the best result. This provided early reassurance to clients (and this Reviewer!) that the issues had been grasped and the case was in good hands.”

“ Although there was little caseworker continuity at this supplier, advice given was clearly promptly and succinctly summarised in letters, so that each successive caseworker could readily ascertain the advice that had previously been given by colleagues.”



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Say it in a Letter! Continued...

“...simply incomprehensible. It would be difficult to imagine the sense of disillusion and concern that the client must have experienced on reading the following...” We have forwarded your recent letter to Counsel, but her advice about your proposed Crown Court election is still as firm as ever”

“ Despite our site visit, the dichotomy with the prosecution over the precise location of the locus in quo and its juxtaposition with the C.C.T.V remains unresolved”.... (This! - to a 12 year old client with Attention Deficit Hyperactivity Disorder!).



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Listen to your clients, and note what they say

- **Instructions are the building blocks** of good advice and representation, yet so often, reviewers see clients left out of the 'loop'
- **What are P.R.'s looking for? : -**
- **A clear record of the client's instructions**

"The Police Station attendance notes in the cases of 'C' and 'D' were of great concern in that it was not clear what if any instructions had been taken before interview under caution"



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Listen to your clients, and note what they say Continued...

- **Proofs** of Evidence in contested and Crown Court cases, seen and **agreed by the client**.

“It was disappointing to note that although there is a clear attendance note on each file, in not one contested case were the client’s instructions set out in a proof of evidence. This was of the most acute concern in the case of ‘G’, who was told in the file closure letter... “and you were convicted. Unfortunately, this was probably because you contradicted your earlier account under cross-examination”. This issue, and in particular this file, contributed more than any other factor to the unfavourable rating”.



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Listen to your clients, and note what they say Continued...

“Instructions in contested cases were carefully noted in sufficient detail, as were the client’s observations on the prosecution statements where the case was sufficiently complex to warrant it. Indeed it was this practice that appeared to lead to the exceptional outcome in the case of K, who was able to demonstrate that he had not arrived at the scene when the Crown witnesses T and C made their alleged observations”.

- It is also clear that reviewers expect a degree of **persistence** in coaxing instructions out of challenging or apathetic clients...



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Listen to your clients, and note what they say Continued...

- “Although P was written to on no less than six occasions, the letters never went beyond vague invitations to contact the writer’s secretary. Clients often do not help themselves, but this is a problem that members of the Criminal Defence Service encounter and overcome on a daily basis. Much more persistence and imagination was called for in obtaining instructions than was seen in this file sample”



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Behave!

- Fortunately, comments in Reviews about **ethical issues** are comparatively rare. However, when ethical issues are identified, they tend to have a **very significant impact** on the overall rating.
- What are P.R.'s looking for? : -
- **Systems** for **identifying** and resolving **conflicts of interest** and other ethical issues are both **robust and transparent**, and **caseworkers** have a **thorough understanding** of how to operate them.



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Behave! Continued...

“The conflict checks, although carried out, were pointless for Criminal Cases, since they were only carried out against the opponent, who in every case was described as ‘the police’ “

- **Timely compliance with undertakings and orders of the Court**
- **Observe client confidence**, including that of **child clients**
- **Reviewers are unlikely to be ‘taken in’** by the various subterfuges that caseworkers sometimes adopt in order to retain a case/client when the proper course of action would be to cease to act.



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Behave! Continued...

- “It was the cause of the most acute concern that (the firm) continued to act on behalf of both C and M, despite C having clearly incriminated M in her Police Station interview. That separate counsel were instructed heightened rather than lessened the concern because it showed that (the firm) were aware of the problem. As a result, the service provided to M fell far below that which users of the Criminal Defence Service are entitled to expect.”



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Behave! Continued

“...although consent from the child client could be inferred in some cases, in others it could not. For instance, it is clear from the P.S.R. in the case of M that she had a difficult relationship with her mother, who should certainly not have been sent copies of correspondence”.

- Although Peer Reviews are not costs audits, Reviewers have in the past referred serious concerns over suspected irregularities to the Special Investigations Department.



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File Build and Management

- What are P.R.'s looking for? : -

- Does your file pass the 'pick-up' test?

“Files were divided into coloured segments for correspondence, prosecution papers, and funding papers. Court attendance sheets and attendance notes were likewise colour coded, and usually typed. Correspondence was sequential and well expressed. All this would have enabled successive caseworkers on picking up the file to tell at a glance the present position, and advance the case in the most effective way”



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File Build and Management Continued...

- Consider making use of **booklets**, **pro-forma**, and **standard paragraphs** to promote **consistency**

“There was an impressive selection of well-drafted generic documents and standard paragraphs. Pro-formas, such as the Police Station one, all had a suitable series of prompts. All of this combined to provide caseworkers with a most effective platform on which to produce work of a consistently high standard”.



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File Build and Management Continued...

- **Files that ‘go to sleep’** will inevitably be the ones selected for P.R.! Reviewers understand this. Provided they see evidence of a **system for addressing it**, they can be surprisingly understanding.

“ The concerns expressed about the delays on the A. Z. file were serious ones. The supplier has been given the benefit of a considerable degree of doubt about the poor service this vulnerable client received. This is because elsewhere there was ample evidence of an effective system of file supervision and review, and supervisor’s comments were invariably acted upon within the time limit stipulated.”



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File Build and Management Continued...

- ...But **don't be mechanistic!**
- There is on one hand the **optimum use of generic material**, such as checklists and standardised paragraphs, in order to promote consistency (good) **and** on the other, **failure to tailor such material** to the circumstances of a particular case (bad).
- Some of the **most trenchant criticism of all** in Peer Reviews has been reserved for '**Client Care**' letters which treat the client to a lengthy introduction to the firm's practices, or an explanation of various aspects of the Criminal Justice System, but **contain no word of advice about the client's own case, or fail to adapt standard paragraphs to the circumstances of each case.**



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File Build and Management Continued...

- **Failure to update standard wording** is seen by Reviewers as a serious and **widespread concern**, especially when the Rule 15 letter gave clients information about funding that was misleading, or just plainly wrong.
- ...And keep **generic material up to date and relevant**
- The following remarks were made about a Supplier whose files were described by the Reviewer as '**a triumph of form over substance**' ...



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File Build and Management Continued...

‘standard letters were never tailored sufficiently to the circumstances of each case. Passported clients were told of the firm’s private-client charging rates, and the importance of providing a retainer when asked. Clients in custody were regularly invited to attend the office, or reminded of the importance of keeping their bail conditions, and notifying changes of address, and quite young children addressed as ‘Mrs.’ or ‘Mr.’ Youths were treated to detailed but wholly irrelevant information on venue. Those wishing to complain were ultimately referred to Mr. S, who, as the only crime caseworker at the firm, would invariably have been the object of the complaint!’



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File Build and Management Continued...

- ‘ Whilst file supervision and review pro-formas were seen on a number of files, they were either not completed, or completely ineffective, in that **work was ‘ticked’ as having been done when it clearly hadn’t.**’
- It is clear that **Peer Reviewers** often **see these practices** as **symptomatic** of a **mechanistic approach** to case preparation, perhaps superficially impressive, but where **no care, thought or effort** is given **to addressing the real issues** faced by the client.



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File Build and Management Continued...

- Significantly, the ratings given to Suppliers that attract criticisms of this sort tend to be on the low side.



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Leave a Clear Footprint

- Although **Peer Reviewers**, can often infer what has happened in a case, even though the evidence on file may be minimal, we **are not mystics**.
- What are P.R.'s looking for?
- Unless you **evidence work on file**, you run the risk that you will not be credited for it. **Claims** as to **whether work** has been done, or sufficiently **evidenced**, are often **the subject of unsuccessful Representations** (see 'what we do' above) by suppliers...



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Leave a Clear Footprint Continued...

“ The Representation that Caseworkers invariably warn clients of the need to answer bail, and give verbal advice on appeal, is noted, but there was no evidence on any file that this was the case. Accordingly, this remains as an ‘Other’ Area of Concern.”

- When **work is claimed** for, **but not evidenced**, this is frequently regarded as an **aggravating feature**...

‘Again, on the file of P, there was a note which read ‘ R.R., considering A.D. and Unused – 23 units.’...However, as on previous files there was no evidence of what this ‘consideration’ amounted to, nor of any analysis, nor of any conclusions being drawn, nor of any action being taken as a result, nor of any advice being given to the client...

In fact no ‘end result’ at all.’



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Leave a Clear Footprint Continued...

‘Although 90 mins was claimed for an ‘analysis of the prosecution statements’, the note amounted to no more than just a verbatim recital of the content of those statements.’

- **Evidence of analysis and consequent action will be regarded as a Positive Finding**



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Leave a Clear Footprint Continued...

“ It was clear that the caseworker had carefully considered, and recognised the significance of this aspect of the prosecution case. There was a detailed note which cross-referenced it to the client’s account, relevant case-law had been downloaded, the Home Office Guidance on the use of C.S. (incapacitant) had been obtained, and it had all been provided to Counsel in a most informative brief.”

- Whilst Criminal Practitioners usually need no invitation to ‘showboat’, suppliers could also **bear in mind that letters** may be the way you can **record good work** that would **not otherwise leave any ‘footprint’** on the file. At least one Reviewer has been prepared to infer good advocacy at fought bail applications and at trial purely from the self-congratulatory descriptions of the hearings as summarised in letters to the client!



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The inside track!

- Here are some ways you can **help the Reviewer reach a favourable decision** on your file sample, and **avoid** having to make **representations**.
- **Linked files**...It will not be necessary to send all the files associated with a given client. **The files required are all those up to stage requested and all those of other clients represented in the same case.** If however other files contain evidence of work which is connected to the file requested, then these other files should also be submitted. It might be for example that a repeat client's old file(s) were kept with the current file(s) as a useful point of reference. This might help explain and put in context what would otherwise look like a poorly prepared file.



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The inside track! Continued...

- **Context...**As suggested above, in a busy practitioner's life, it may not be practical or cost effective to rehearse in every file certain issues which had a bearing on the way the case has been conducted. This might be, for example, because it is accepted local practise, is part of a pilot scheme or is something which is common knowledge locally about a party involved in the case. **If a supplier feels that something on a file needs some explanation**, then there would be nothing wrong in providing this with the file. However, any attempt to completely re-write the history of the case would not be acceptable!



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The inside track! Continued...

- **Manuscript notes...Peer Reviewers cannot review work if they cannot decipher it.** Practitioners do tend to produce illegible handwritten notes particularly from police station attendances. Although no payment could be claimed, suppliers might consider reproducing some or all of these in typescript for the purposes of review. Again, no attempt should be made to pass this off as the original work



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The inside track! Continued...

- **Scope of the review...** The peer review process necessarily only covers publicly funded work. Suppliers therefore have every right and probably a positive obligation, if they do not have the client's consent, to withhold papers that do not evidence funded work. However to prevent any misunderstanding it would be helpful if suppliers could indicate that this has been done.



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The inside track! Continued...

- **Standard letters and documents...** Sometimes reviewers see reference to the enclosure of standard letters or documents in letters to clients from the supplier. These are not always contained on the file. It would be helpful if copies of these documents were submitted with the file sample, together with any other generic material generated to assist caseworkers or sent to the client during the life of a file. Some suppliers remove file content from the cover prior to storage. Whilst this is no doubt ecologically laudable, it should be borne in mind that if file covers have printed checklists/aides memoir/prompts on them which are completed as the case progresses, if these have been recycled, Peer reviewers will not have the chance to observe work which would probably have attracted positive comment. Perhaps in these circumstances a letter of explanation, accompanied by a specimen file cover, could be submitted.



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Other Indicators of Quality

- Unfortunately, we cannot easily ‘lift’ examples of pro-formas and document drafting from real Peer Reviews in the same way as we have with correspondence, and comments from Reports. Good suppliers may have spent many hours in designing and perfecting such work and they are entitled to submit files confident in the knowledge that their ideas will not be stolen. (We had the supplier’s consent to include the clearly Competence Plus Crown Court Bail Application you have seen in Richard’s case)
- However, we can list the types of such work that consistently attract positive comment from Peer Reviewers. Again, whilst the examples cannot be shown, the comments are directly lifted from real Peer Reviews



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Other Indicators of Quality Continued...

- ‘A well designed **Police Station pro-forma** with an appropriate series of prompts, that was usually fully completed by caseworkers’.
- ‘Caseworkers were proactive and adversarial in ensuring that C.P.S. fulfilled their Disclosure obligations. In the cases of A.B. and C, a well-drafted **Defence Case Statement** was served. In fact, in the case of C., when (*the targeted secondary disclosure*) was not forthcoming, an **application under S.8 C.P.I.A.** was promptly made. It would be reasonable to infer that it was this pressure that finally caused the C.P.S. to agree to the plea-bargain that it had originally rejected’.



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Other Indicators of Quality Continued...

- ‘Although unsuccessful, the arguments in support of bail in the **Crown Court Judge in Chambers Application** could not have been more persuasive’
- ‘(*The Caseworker D*) showed patience and persistence in **responding to the frequent requests** from the client **to vary her bail**’



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Other Indicators of Quality Continued...

- (*Caseworkers*) showed themselves to be proficient at various aspects of case preparation. In the case of E., there was a successful application to exclude evidence of the **Defendants Bad Character**, and unsuccessful but worthwhile applications to admit evidence of the **Non-Defendant Bad Character** of the prosecution witness F, and to **resist the Crown's application to admit as hearsay** the statement of (*the victim*)'
- ' In all Crown Court cases, there was an **informative brief to counsel** that succinctly set out the evidence in support of each count, followed by the client's response'



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Other Indicators of Quality Continued...

- ‘In most contested and Crown Court cases, a **proof of evidence** was prepared for and agreed by the client. Where the facts were sufficiently complex, it included the client’s **comments on the prosecution statements**’