



Independent
Quality Assessment
of Legal Services

IMPROVING YOUR QUALITY

A guide to the common issues identified through peer review

employment

Foreword

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 second edition of ‘Improving Your Quality – Employment’, 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 Employment 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 guide, 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 Employment 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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A. Early Stages of the Case

1. Have proper instructions been taken?

Why does this matter?

- A failure to take sufficient instructions on the background facts of a case prevents the adviser developing the understanding of the case that is necessary if the case is to be properly advanced.
- Insufficient instructions limit the ability of the adviser to give the client properly informed advice and pursue all relevant issues including potential claims other than those specifically raised by the client.
- If the adviser is not in possession of the relevant background facts then there is a risk that inappropriate claims are pursued and viable claims are missed.

How can I check this on my files?

- Are viable claims not pursued at all or only pursued at a later stage in the case when the adviser realises that a potential claim has been missed?
- Does the adviser have to apply to amend existing Employment Tribunal proceedings to include additional claims that should have been included in the original claim?
- Are claims or individual causes of action withdrawn at a late stage in the case?
- Are awards of costs made against clients for pursuing weak or misconceived claims?

What will help?

- Appropriate use of checklists can help ensure that proper instructions are taken.
- Appropriate supervision and training can assist advisers to be aware of the relevant causes of action applicable to a particular set of facts.
- Ensuring that the experience and ability of the adviser is appropriate to the complexity of the case.
- Ensuring that advisers have sufficient time to take proper instructions should help the case get off to a good start.

“Ensuring that advisers have sufficient time to take proper instructions should help the case get off to a good start.”

2. Does the client care letter contain inappropriate or irrelevant information?

Why does this matter?

- Inaccurate information about the limits of the Legal Help Scheme, the operation of the fixed fee, the application of the Statutory Charge or the operation of costs in the Employment Tribunal can confuse and worry the client and discourage him or her from pursuing the claim.
- Inaccurate information of the type set out above can make a client vulnerable to entering into private paying arrangements that are not necessary and not in the client’s best interests.

How can I check this on my files?

- Does the client care letter place incorrect limits on the work that can be done under the Legal Help Scheme?
- Does the client care letter make it clear that as long as the Sufficient Benefit Test is satisfied, all legal work on the case except for representation is covered under the Legal Help Scheme?
- Does the client care letter give inaccurate advice about the application of costs in the Employment Tribunal?
- Does the client care letter refer to the Statutory Charge applying to Employment Tribunal cases?
- Does the client care letter contain information that is not relevant to the client’s case?
- Do a disproportionate number of clients cease to give instructions at an early stage of the case?
- Are clients unnecessarily moved onto a private paying basis?

What will help?

- Ensuring that the client care letter sets out the ambit of the Legal Help Scheme accurately and clearly.
- Ensuring that accurate information is provided about the operation of the Statutory Charge and Employment Tribunal costs
- Ensuring that client care letters do not include information that is irrelevant or inapplicable to employment cases or to the client’s own case.
- Implementing periodic reviews of client care letters.

“Does the client care letter contain information that is not relevant to the client’s case?”

3. Are clients given clear, accurate and early advice about the date by which all claims must be submitted to the Employment Tribunal?

Why does this matter?

- Clear and early advice about limitation dates is crucial as, if a deadline is missed, the client may be prevented from submitting a claim to the Employment Tribunal. This can prejudice the client and result in claims of professional negligence.

How can I check this on my files?

- Does the note of the first meeting confirm that the client was advised about limitation dates?
- Does the initial letter confirm the precise date(s) by which all Employment Tribunal applications must be submitted?
- If the precise limitation date cannot be given in the first letter, is the client given sufficient information on the deadline and is this advice updated or clarified as more information becomes available?
- If a Statutory Grievance is raised, is the client informed in writing of the new date by which any Employment Tribunal application must be submitted?
- If the client has missed an Employment Tribunal deadline, was the client advised about the possibility of submitting a late claim or, if appropriate (for example a claim for unpaid wages), about the scope to pursue the claim in the county court?

What will help?

- Ensure that all advisers have a clear understanding of the operation of Employment Tribunal deadlines and the importance of always advising upon them.
- Ensure that clear advice is given to clients at the earliest opportunity about the Employment Tribunal deadline and the date on which it expires.
- Ensure that limitation advice identifies the actual date of the deadline. Clients may be confused if they are expected to work out the deadline themselves by reference to the date of termination and the three-month period. Often it requires some expertise to identify the actual date of termination.
- Ensure that clients are properly informed about the effect of raising a Statutory Grievance upon the deadline.
- Ensure that the date of the deadline is communicated to the client on all claims even if the claim is weak or uncertain.
- If precise advice on the date of the deadline is not possible then general guidance should be given and an explanation given to the client of the information needed in order to pinpoint the relevant date. This advice should be updated or clarified as more information becomes available.
- Ensure that proper consideration is given to pursuing late claims in the Employment Tribunal or in the county court and that clients are advised of the limitation dates that apply to any county court claims.

4. Are all appropriate causes of action investigated and pursued?

Why does this matter?

- A failure to investigate and, where appropriate, pursue all relevant causes of action (including those not specifically raised by the client) means the client is not being properly advised and that his or her interests may be prejudiced. If potential claims are not submitted to the Employment Tribunal, then due to the operation of the Employment Tribunal deadline, the client may be prevented from pursuing those claims at all.

How can I check this on my files?

- Does the adviser provide sufficient advice upon all potential claims disclosed by the client's instructions?
- Are all potential claims disclosed by the client's instructions pursued and, if not, are the reasons for not pursuing certain claims recorded on the file and explained to the client?
- Are issues that generally arise upon the termination of a contract of employment investigated by the adviser even if the client does not expressly raise those issues (e.g. outstanding holiday pay, notice pay or wages)?
- If the client has not been provided with written particulars of the main terms and conditions of employment, is consideration given to seeking 2-4 weeks' pay for this omission?

What will help?

- Appropriate use of checklists can help to ensure that all potential claims are considered and pursued.
- Appropriate supervision and training to ensure that advisers are aware of all potential causes of action and the circumstances in which they arise.
- Ensuring that the experience and ability of the adviser is appropriate to the complexity of the case.

“Does the adviser provide sufficient advice upon all potential claims disclosed by the client's instructions?”

5. Are more complex claims identified, investigated and, where appropriate, pursued?

Why does this matter?

- If more complicated claims, such as discrimination, unfair dismissal claims where the reason for the dismissal is an exception to the 12-month qualifying period and constructive dismissal claims, are not identified and properly handled then clients' interests may be prejudiced. It can be particularly frustrating for clients if serious claims, such as discrimination, are not properly handled.
- If potential claims are not submitted to the Employment Tribunal then, due to the operation of the Employment Tribunal deadline, the client may be prevented from pursuing those claims at all.
- If these more complex claims are not properly investigated and understood, their merit may not be recognised by the adviser and they may not be properly progressed.

How can I check this on my files?

- Are dismissals that disclose possible unlawful discrimination routinely pursued as straightforward unfair dismissal claims, where a discrimination case should also be brought?
- Do clients who allege discrimination cease to provide instructions shortly after initial interview? If so, it may suggest that they feel that genuine discrimination complaints are not being properly investigated or pursued.
- Are clients who allege constructive dismissal or discrimination given an inadequate or over-pessimistic assessment of the claim's strengths or is there a failure to investigate the potential claim with sufficient rigour?

- Are clients advised that they do not have an unfair dismissal or constructive dismissal claim because they do not satisfy the 12-month qualifying period without the adviser considering whether the reason for dismissal falls within the exceptions to the 12-month rule?
- Are clients who do not have 12-months' service incorrectly advised that they have an unfair dismissal claim because the adviser mistakenly believes the case falls within the exceptions to the 12-month rule and then the claim has to be withdrawn when the jurisdictional issue is raised by the Employment Tribunal or the Respondent?
- Where the client has resigned, does the adviser enquire into the reasons for the resignation and consider the scope to bring a constructive dismissal claim?

What will help?

- Ensure that advisers are given sufficient training on constructive dismissal, the operation of the exceptions to the 12-month qualifying period and discrimination claims.
- Ensure that more complex claims are dealt with by advisers with sufficient experience and ability.
- Ensure that there is sufficient supervision of less experienced advisers.
- Use of checklists can assist to ensure that more complex claims are identified.
- Ensure that a proper assessment is made of a claim before the client is advised on the strengths or weaknesses of that claim.

6. Is the advice in the first letter of advice clear and sufficiently comprehensive to allow the client a proper understanding of the case?

Why does this matter?

- Unless the initial letter is clear and sufficiently comprehensive the client will not have a proper understanding of his or her case. The client will not be in a position to provide clear and properly informed instructions as the case progresses. A lack of a proper explanation of the issues in the case and its legal basis can impede clients from developing 'ownership' of the case and result in clients ceasing to give instructions.

How can I check this on my files?

- Are the client's initial instructions confirmed in the first letter?
- Does the first letter contain sufficient advice on the issues in the case and on the legal basis of the client's claims?
- Are letters written in plain English?
- Do letters contain superfluous information about issues that are not relevant to the client's case?
- Do the letters contain tailored advice applying the adviser's professional experience and expertise to the legal issues and providing the client with an assessment of how the relevant legal principles apply to the facts of the client's case?
- Is there an over reliance on standard paragraphs in the first letters?
- Do clients regularly cease to provide instructions after receiving the first letter? If so, this may indicate a lack of clarity in the initial letters.
- In circumstances where it is difficult to give full advice following the first meeting, were clients given more detailed advice as the case developed?

What will help?

- Ensure that wherever possible, clients are advised at the outset upon the legal basis of the case, the prospects of success and the value of the claim.
- If, owing to the nature of the instructions, it is not possible to give comprehensive advice during and following the initial meeting, then this should be explained to the client and the advice should be given as soon as sufficient instructions have been obtained. Proper efforts should be made to obtain these instructions.
- Use standard headings to split the advice in the first letter into logical sections. This will help to ensure that all relevant issues are addressed and should make the advice more digestible for the client.
- Make sure that all letters are drafted in clear and straightforward language.
- Separate the advice part of the initial letter from the client care part of the letter.

7. Are clients provided with a reasoned and balanced opinion about the ‘prospects of success’ at an early stage and is this advice updated as the case develops?

Why does this matter?

- Clients want to know whether the strength of the case justifies the worry and inconvenience of fighting it. Failing to inform the client that they have a strong case might discourage the client from pursuing a viable claim. If the case is weak then communicating this analysis manages the client’s expectations and is important for the operation of the Sufficient Benefit Test. Analysis of the strengths and weaknesses of the case assists the client to make properly informed decisions about whether to bring or continue the case and is crucial to accepting or rejecting any offers of settlement.

How can I check this on my files?

- Do initial attendance notes and the initial letter contain appropriate advice on the strengths and weaknesses of the case?
- Is the advice on the prospects of success updated/reviewed as the case develops?
- Is all advice on the prospects of success properly balanced and based on a reasoned assessment of the facts of the case.
- Do clients with strong or arguable cases cease to provide instructions at an early stage? This may be an indication that the advice on prospects of success is absent or unnecessarily pessimistic.

- Is there evidence of clients being advised to withdraw their cases at a late stage in the proceedings, or when a costs threat is made by the respondent? This may indicate that either the adviser has not properly considered the case prospects as the case unfolds, has been too optimistic with initial advice on the prospects of success or that the advice has not been reviewed properly during the course of the case.
- On cases where the prospects are uncertain, has the adviser informed the client of what evidence is required to determine or strengthen the case prospects and/or has the adviser sought to gather this information from the relevant third parties?

What will help?

- Ensure that an early assessment of the strengths and weaknesses of the case is carried out and the outcome of this assessment is communicated to the client in a clear and reasoned way. If the prospects are uncertain or weak then, where possible, efforts should be made to gather the evidence that allows the case to be strengthened or the assessment of the case prospects to be given more certainty.
- Ensure that any assessment of the case prospects of success is balanced, based on a proper consideration of all the available facts in the case and confirmed in writing.
- Ensure that advice on the case strengths and weaknesses is updated as the case unfolds.
- Ensure that advisers understand the circumstances in which costs can be awarded against a claimant and give considered and balanced advice when costs threats are made.
- Assessing the prospects of the case can be difficult but proper training and supervision, particularly of more junior advisers will assist.
- Consider including a check of the advice on prospects of success as part of any supervisor review process to ensure that proper advice on this important issue is being given on all files.
- Ensure that more complex claims are dealt with by advisers with sufficient experience and ability.

“Is all advice on the prospects of success properly balanced and based on a reasoned assessment of the facts of the case.”

8. Where the client has legal problems with which the adviser or supplier cannot assist, is a referral considered and, where appropriate, acted upon?

Why does this matter?

- It is often the case that clients who have been dismissed have related financial or welfare benefits problems or a potential personal injury claim (e.g. rent/mortgage arrears, general debts or a Jobseekers' Allowance sanction). If the supplier cannot deal with the additional problems then a referral to an organisation that can assist greatly benefits the client as the client's full range of problems can then be addressed.

How can I check this on my files?

- Does the adviser enquire of clients, particularly those who have just lost their jobs, who have been injured at work or for whom a disability discrimination claim is being pursued, about additional problems they may have?

- If additional problems are identified by the adviser or raised by the client, does the adviser assist in directing the client to alternative sources of help for dealing with these problems?

What will help?

- A common sense awareness of the non-employment problems that are likely to be encountered by employment clients will encourage advisers to make the necessary enquiries of clients.
- If the above is combined with an awareness of alternative organisations that can assist with problems with which the supplier cannot assist and a willingness to put the client in touch with those organisations then referrals and signposting can become a matter of course.
- The use of a file opening checklist that encourages the adviser to ask about additional problems.

“If additional problems are identified by the adviser or raised by the client, does the adviser assist in directing the client to alternative sources of help for dealing with these problems?”

B. Intermediate Stages of the Case

9. Do advisers take responsibility for the progression of the case?

Why does this matter?

- The purpose of the Legal Help Scheme is to give eligible clients the benefit of the expertise of specialist suppliers. If cases are to progress smoothly and clients are to be shielded from the stress of litigation then the adviser must take primary responsibility for moving the case forwards. If this does not happen then it is unlikely that the best will be made of the client's case.

How can I check this on my files?

- Does the adviser draft any necessary grievances?
- Does the adviser prepare any Employment Tribunal claim?
- Does the adviser deal with any contact with the employer, the Employment Tribunal and ACAS?
- Does the adviser handle any settlement negotiations?
- Does the adviser gather the necessary evidence and take responsibility for complying with any Employment Tribunal directions?
- Does the adviser ensure that the client is properly prepared for any hearing?

What will help?

- The provision of appropriate training and supervision will assist advisers develop and maintain the skills and confidence necessary to take proper responsibility for the case.
- Ensure that more complex claims are dealt with by advisers with sufficient experience and ability.
- Accept that it is the adviser's responsibility to run and make the best of the case and handle the case accordingly.

“Accept that it is the adviser's responsibility to run and make the best of the case and handle the case accordingly.”

10. Are documents such as grievance letters, Employment Tribunal claim documents, schedules of loss, witness statements and discrimination questionnaires drafted correctly?

Why does this matter?

- If documents are not properly drafted then viable claims or vital evidence may be omitted.
- Badly drafted documents create a poor impression with both the Employment Tribunal and opponents and can considerably weaken a client's case.
- If the schedule of loss is not properly drafted then the client's claim may be incorrectly valued and any negotiations compromised as a result.

How can I check this on my files?

- Do formal documents address all the relevant issues in a clear and persuasive manner?
- Are there regular requests for Further and Better Particulars and/or Written Answers (additional information) from the other side? If so, this may suggest the claim documents have not been properly drafted.
- Is there a regular need to amend claim documents to include additional claims that could have been included in the original claim?
- Do discrimination questionnaires request information that is relevant to the case?
- Does the schedule of loss include all heads of damage and correctly value each head of damage?

What will help?

- Ensuring that documents and statements are carefully drafted and that they address each claim and issue clearly, persuasively and in sufficient detail.
- Obtaining the client's comments on draft documents and making the necessary amendments.
- Appropriate use of precedents and checklists may assist with the drafting of documents with standard/common clauses and paragraphs. However, there is no substitute for good quality drafting tailored to the facts of the client's case.
- Careful preparation of the schedule of loss.
- Ensuring that appropriate training and supervision is provided.
- Ensuring that the complexity of the case is appropriate for the experience and skill of the adviser.

11. Are proper efforts made to gather evidence in support of the client's case?

Why does this matter?

- Proper efforts to gather the necessary evidence (e.g. witness evidence, contractual documents and employer records) can result in information being secured that materially strengthens the client's position in negotiations or at the Employment Tribunal hearing.
- If proper efforts are made to gather evidence then, whether the evidence supports or weakens the client's case, the adviser will be in a better position to give an accurate assessment of the strengths and weaknesses of the case than if the evidence had not been gathered. Such a process is vital to the proper advancement of the case.

How can I check this on my files?

- Does the adviser regularly request that the employer provide relevant background documents and, where necessary, make formal requests for disclosure, written answers and further and better particulars?
- Does the adviser consider potential witnesses and make proper efforts to draft formal witness statements?
- Does the adviser explain to the client the evidence needed and check with the client how it might be obtained if it is not available from the respondent?
- Is there appropriate use of discrimination questionnaires?

What will help?

- Ensuring that potential witnesses for the client are contacted and witness statements are drafted.
- Considering what evidence is needed to strengthen the client's case and weaken the employer's case and making proper efforts (requests for disclosure and/or written answers and drafting discrimination questionnaires) to gather that evidence.
- Explaining to the client the type of evidence that is needed to support or strengthen the client's claim.

“Does the adviser consider potential witnesses and make proper efforts to draft formal witness statements?”

12. Is the client kept up to date with developments in the case and the effect these developments have on the prospects of success and value of the case?

Why does this matter?

- If the client is to be in a position to give informed instructions throughout the case then the adviser must ensure that sufficient updating advice is provided on the case and its strengths and weaknesses and its value.
- If any problems with the case are explained to the client then the client may be in a position to provide additional information or sources of evidence that can address the weaknesses.

How can I check this on my files?

- Is the advice updated following significant developments in the case (e.g. the employer's response to a grievance letter, letter before action or discrimination questionnaire, the service of the ET3, disclosure and/or exchange of statements)?

- Is a schedule of loss prepared that accurately assesses every head of damage?
- Is incoming correspondence or documents from the employer copied to the client without appropriate analysis or advice being given?
- Is there a lack of narrative by the adviser about the progression of the case or changes in the prospects of success?
- Do clients stop giving instructions or decide not to pursue viable cases?
- Are clients given advice tailored to the facts of their case?

What will help?

- Ensure that clients are given advice at key stages in the case.
- Ensure that as the respective cases emerge that the client is kept up to date with the strengths and weaknesses of the case.
- Prepare a schedule of loss that accurately values each head of damage.
- Ensure that significant or complex advice is confirmed in writing.
- As well as providing written advice, ensure that clients are offered the opportunity to discuss significant developments or complicated aspects of the case.
- The use of checklists can assist in ensuring all material issues are addressed.
- Remember clients are unlikely to be familiar with the litigation process and need to be provided with ongoing advice as the case unfolds.

“Is there a lack of narrative by the adviser about the progression of the case or changes in the prospects of success?”

C. Latter Stages of the Case

13. Are clients given correct and balanced advice about the pros and cons of any offer of settlement?

Why does this matter?

- Clients can only make informed decisions about whether to accept or reject an offer of settlement if they have a clear picture of the case prospects of success and its value.

How can I check this on my files?

- Has the adviser provided the client with a clear, reasoned and up to date assessment of the strengths and weaknesses and is that assessment supported by the facts of the case?
- Has the adviser prepared a schedule of loss that accurately values the claim or claims and explained the schedule of loss to the client?
- Is there evidence of advisers concentrating on the negative aspects of the client's case in a way that does not allow a properly balanced evaluation of the strengths of the case and results in a low offer of settlement being accepted?

- Has the adviser told the client whether he or she considers any offer of settlement to be acceptable or not and properly explained the reasons for reaching this conclusion?
- Has the adviser attempted to improve any unacceptable offer of settlement?

What will help?

- Giving appropriate training and supervision to ensure that correct and balanced advice is given.
- Preparing a proper schedule of loss.
- Ensuring that the experience and skills of the adviser are appropriate to the complexity of the case.

“Has the adviser told the client whether he or she considers any offer of settlement to be acceptable or not and properly explained the reasons for reaching this conclusion?”

14. Is sufficient advice and assistance given in the lead up to any Employment Tribunal hearing?

Why does this matter?

- Employment Tribunal hearings during the course of the case can be crucial to the final outcome. The final hearing determines the outcome of the case. Whilst the Legal Help Scheme does not generally fund representation, there is much the adviser can do to assist the client prepare for the hearing and, in doing so, help the client make the best of his or her case.

How can I check this on my files?

- Is the client given information about the purpose of the hearing and guidance about how to handle the hearing?
- Are legal submissions, witness statements, bundles and a schedule of loss prepared for the client to use at the hearing?
- Is consideration given to alternative sources of representation (Free Representation Units, counsel and/or on a private paying basis with the supplier)?

What will help?

- Witness statements, a submission, the bundles and a schedule of loss, along with some guidance about the purpose of the hearing and the relevant issues that will be addressed at the hearing should be given to the client in good time for the hearing.
- When a hearing appears likely the client should be advised on the options available to the client for representation and, where appropriate, the adviser should make the necessary arrangements.

“Is the client given information about the purpose of the hearing and guidance about how to handle the hearing?”

15. Are cases closed inappropriately due to an incorrect interpretation of the operation of the Legal Help Scheme?

Why does this matter?

- The premature closing of files due to the incorrect operation of the fixed fee regime tends to leave clients to handle their own cases, incur unnecessary legal costs, withdraw their claims or force them to accept low offers of settlement. Clients' interests are often prejudiced when files are closed prematurely.

How can I check this on my files?

- Does the client care letter contain incorrect information about the limits of the Legal Help Scheme (e.g. that the amount of help that can be provided is limited to preliminary advice or limited to the value of the fixed fee)?
- Are files closed at approximately the level of the fixed fee?
- When the case reaches the fixed fee are concerns routinely raised about the ability to satisfy the sufficient benefit test?

“With the exception of representation, the supplier should undertake all legal work on the file as long as the sufficient benefit test continues to be satisfied.”

What will help?

- With the exception of representation, the supplier should undertake all legal work on the file as long as the sufficient benefit test continues to be satisfied. Any information provided to the client about the operation of the Legal Help Scheme, should reflect this fact and not place inaccurate limits on the Legal Help Scheme.
- Care should be taken to ensure that any assessment of the application of the sufficient benefit test is carefully considered particularly if the assessment is negative and results in the closure of the file.
- Appropriate training on the operation of the Legal Help Scheme should be provided.

16. Where a case is closed, is the closure handled responsibly?

Why does this matter?

- If the file should be closed, for example due to a lack of instructions, a failure to satisfy the sufficient benefit test or because the only outstanding work is representation then a failure to give the client proper advice on the issues outstanding on closure or the relevant options for ongoing legal assistance can leave the client unnecessarily exposed to the pressures of litigation and risk prejudicing the client's interests.

How can I check this on my files?

- When files are closed, is the client advised of any outstanding issues (e.g. unexpired limitation dates or outstanding Employment Tribunal directions) in the final letter?
- If the limit of the work that can be done under the Legal Help Scheme has been reached, is the client given clear, accurate and balanced advice on the options for advancing the case (e.g. hourly private rates, no win no fee, not for profit agencies or the client representing him or herself)?

- Are clients who have unsatisfied Employment Tribunal judgments or who are owed settlement money, given advice on the recovery of the outstanding amounts?
- If the case is weak but the client intends to continue with the case, is appropriate advice given on the risk of costs being awarded against the client?

What will help?

- In the final letter the client should be reminded of any outstanding issues including limitation dates and outstanding Employment Tribunal directions.
- If no further work can be done under the Legal Help Scheme then the client should be given clear and balanced advice about the pros and cons of the available options for advancing the case.
- Advice should be given in the final letter about the enforcement of any outstanding Employment Tribunal claims or unpaid settlement money.
- If the client intends to pursue a weak case then sufficient and balanced advice should be given of the risk of costs being awarded.

“In the final letter the client should be reminded of any outstanding issues including limitation dates and outstanding Employment Tribunal directions.”

D. General Comments

17. Are clients given written confirmation of significant advice and/or instructions?

Why does this matter?

- A lack of written advice increases the possibility that there will be future disputes about the content of oral advice or instructions. Written advice allows the client and the adviser the chance to refer back to advice and instructions at a later stage of the case. The provision of written advice helps to keep the client in touch with the case.

How can I check this on my files?

- Does the initial letter to the client set out the instructions and advice given at the first meeting?
- Are significant, complex or lengthy instructions, advice and developments confirmed in writing?

What will help?

- Ensure that the instructions and advice given at the first meeting are properly confirmed in writing.
- Ensure at “milestone” stages of the case (grievance response, receipt of ET3, offers of settlement or exchange of statements) that significant instructions and/or advice are confirmed in writing.
- Despite the importance of confirming advice in writing, ensure the client is also offered the opportunity to discuss significant developments or complicated aspects of the case.

“Are significant, complex or lengthy instructions, advice and developments confirmed in writing?”

18. Are handwritten file notes legible?

Why does this matter?

- It is difficult to refer back to illegible handwritten notes. If another adviser needs to work on the file, he or she will find it difficult to carry out work on the case if the file notes are illegible.

What will help?

- Effort should be made to ensure handwritten notes are legible.
- Consider typing up any handwritten notes.

How can I check this on my files?

- Are handwritten file notes legible to others?
- Are notes that are illegible typed up?
- Would files pass the “quick pick up” test if the adviser was absent?

“Are handwritten file notes legible to others?”

Employment Peer Review Panel Members

Michael Bauer

Andrew Montgomery

Janet Smith

Philip Tsamados