



Independent  
Quality Assessment  
of Legal Services

## **IMPROVING YOUR QUALITY**

**A guide to common issues identified through Peer Review**

# Generic Guide

**Second Edition  
April 2011**

## Foreword by Professor Avrom Sherr, IALS

### 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 the '*Improving Your Quality – Generic Guide*', 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 peer reviewers. Derived from peer review reports, analysis has concentrated on those issues frequently contributing towards lower ratings at Peer Review. The issues have been set out broadly following the chronology of a case.

These suggestions for making improvements are not 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 lead to a more general debate concerning standard setting, and the best approaches to dealing with specific quality of advice issues. 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  
September 2009

## Foreword to the First Edition by the authors

Keen readers of the Peer Review section of the LSC website ([http://www.legalservices.gov.uk/civil/how/mq\\_peerreview.asp](http://www.legalservices.gov.uk/civil/how/mq_peerreview.asp)) will be aware that over the course of the last three years a number of Improving Quality Guides have been published, reflecting the findings of peer reviewers in different subject areas. Many of those Guides have been updated and are now in a second edition.

However many of the findings of peer reviewers have not previously been made available. In some areas of law there have not been sufficient reviews to produce a subject specific Improving Quality Guide. In addition, issues that are broader and of more general application are not always covered in detail in the individual Guides, so that the focus can be on issues in that particular area of law.

This Guide is an attempt to improve the overall information that is available about the issues that peer reviewers identify and which inform the decisions that they make. The issues that are set out in this Guide have been derived from an analysis of reports written in the following areas of law:

- Actions Against the Police
- Clinical Negligence
- Community Care
- Education
- Public Law

All of the quotes in this Guide have been taken from these peer review reports to illustrate the ways in which these issues arise in practice. However these issues are to be found not only in the areas of law that have been mentioned but are likely to be found to a greater or lesser extent in every category of law in which peer reviews take place. In many ways these issues are the foundations of dealing with any legal case and while this Guide may be of more use to less experienced advisors, our hope is that any advisor will find both a reflection of much of their own practise and some ideas about how this might be improved.

One benefit of the analysis of Peer Review reports that has been carried out is that it is possible to give an indication of issues that commonly arise and some that recur most frequently. The lists below are not a definitive guide but they do give a good indication of the issues that arise in reports written in different categories about providers throughout England and Wales.

## The most common positive findings

- Effective file organisation, enabling cases to be properly managed.
- A proactive approach to cases, avoiding delay.
- Good outcomes or the best that can reasonably be achieved.
- Initial letters to clients that record clearly the instructions received, the advice given and the action agreed to be taken.
- Evidence of advice being given to clients on a continuing basis about the law and procedure that applies to their case.

## The most common concerns

- An inadequate record of advice about the relevant law and procedure.
- A lack of evidence of merits advice, both at the outset and during the case.
- Legal advice that is wrong or insufficient to deal with the issues presented by the client, sometimes arising from insufficient analysis of the situation.
- A lack of clear written advice about limitation and any relevant time limits.
- Delay, in taking initial action and during the case.

## The most common suggested areas for improvement

- Use of a template initial letter to ensure that the instructions received, advice given and action agreed are always recorded, and also that the advice given is tailored to the client's situation.
- Giving information and advice about law and procedure using standard letters or leaflets, provided that tailored advice is also given applying this to the client's individual circumstances.
- Reviewing existing systems to ensure that regular and accurate information is provided to clients about costs and funding.
- Reviewing systems of supervision to ensure that these are effective, particularly the file reviews that take place.
- Using file reviews to focus on the quality of the advice that has been given, including merits advice.

Finally, everything said by Professor Avrom Sherr in his Foreword is endorsed. This Guide is not intended to be prescriptive but to stimulate discussion about how standards of publicly funded legal work can be maintained and improved.

**Peter Whitfield**  
**Suzanne McClure**  
June 2009

# Contents

|   |    |
|---|----|
| <b>Part A: Initial contact with the client</b>  |    |
| Client contact  | 5  |
| Case allocation   | 6  |
| Full instructions   | 7  |
| Linked issues   | 8  |
| <b>Part B: Initial Action</b>   |    |
| Initial letter  | 9  |
| Time limits and key dates   | 11 |
| Urgent action   | 13 |
| <b>Part C: Advice</b>   |    |
| Local knowledge   | 14 |
| Legal analysis  | 15 |
| Merits advice   | 16 |
| Advice about the relevant law and procedure   | 18 |
| <b>Part D: Work done</b>  |    |
| Strategy  | 20 |
| Evidence  | 22 |
| Drafting of documents   | 24 |
| Was the extent of the work carried out sufficient?  | 25 |
| Were the outcomes achieved the best that could reasonably be achieved in the circumstances? | 27 |
| <b>Part E: Communication</b>  |    |
| Regular updates   | 28 |
| Advice about Legal Aid and funding  | 29 |
| Appropriate communication   | 31 |
| Communication with third parties  | 32 |
| <b>Part F: Case management</b>  |    |
| File organisation   | 34 |
| Cases review  | 36 |
| Proactive approach and lack of delay  | 37 |
| Supervision   | 38 |
| <b>Part G: Case conclusion</b>  |    |
| Appropriate advice on conclusion  | 40 |
| Case closed at appropriate time   | 41 |
| <b>Part H: Conclusion</b>   | 42 |

## Part A: Initial contact with the client

### What are peer reviewers looking for?

- Contact with the client tailored to meet the client's needs.
- An adviser with sufficient knowledge and experience to deal properly with the case.
- A file record demonstrating that full instructions have been taken from the client.
- Evidence that all relevant matters have been identified and acted upon appropriately.

### Client contact

#### ***Contact with the client tailored to meet the client's needs***

“ Good use of interpreters was made where appropriate to ensure that the client understood the advice given. ”  
(*Actions Against the Police* [“AAP”])

As a starting point, the client needs to be able to access the services that are being provided. This will be a particular issue for clients who have difficulties that can affect their ability to get advice.

There need to be arrangements in place so that the needs and abilities of each client are considered. These will include:

- *Considering before the first meeting the client's fluency in English.* Unless this issue is considered and raised with the client before the first meeting there is a risk that either the first meeting cannot go ahead (and that the time of the client and adviser is wasted) or that the meeting goes ahead with the risk that the adviser does not get full instructions and the client does not understand the advice given. The enquiry that is made should be specific as to the client's first language and, if necessary, dialect. Interpreters, paid for as a disbursement, should be arranged if necessary.
- *Home visits.* For some clients it can be either difficult or impossible to attend an appointment at the office of the provider. This could be because of caring responsibilities, illness or disability. The provider always needs to consider whether a home visit is necessary and justified and, in the case of disabled people, the provider must consider the duty to make reasonable adjustments under the Disability Discrimination Act 1995.

- *Prison, Immigration Removal Centre and hospital visits.* Since clients who are detained or in hospital are unable to visit the provider, the adviser must consider whether it is necessary to visit the client.
- *The client having the opportunity to have a friend or family member for support at any appointment.* Although some clients will benefit from moral and emotional support, the adviser also needs to be alert to the risks of a family member or friend attending. The presence of another person can sometimes inhibit the client from providing full instructions or discussing certain issues.

Arrangements that meet the client's needs should be considered throughout the case. However once the client's initial instructions have been taken there may be other methods of communicating with the client that are effective and do not require a face to face meeting, and these are considered further in Part E.

## Case allocation

***An adviser with sufficient knowledge and experience to deal properly with the case***

“ The files showed clear evidence of the adviser's understanding of the law and the information needed from the client in order to progress matters. ” (AAP)

It is then important that the client sees the right adviser. This means having some initial information about the client and the advice that they need. A pre-interview form with basic information can often help to make sure that the adviser who sees the client has the necessary experience and knowledge, as well as the capacity, to take on the client's case.

Where an experienced adviser is not available it may be appropriate to allocate the case to a less experienced adviser who is subject to supervision.

Otherwise the provider should consider whether there is another organisation that can provide the necessary advice and assistance, and if possible then refer or “signpost” the client.

Exceptionally where another organisation cannot assist, an adviser who has sufficient access to external advice and/or supervision may properly have conduct of the case. External advice might include counsel or the Legal Services Commission specialist support lines.

The adviser has a responsibility to ensure that they take appropriate steps if they are asked to take on a case that is too complex for them, or is outside their area of expertise. Such steps could include discussing the matter with a supervisor or more experienced colleague.

If the adviser does not have the expertise or time to deal fully with the client's case:

- There is a risk that the client is prejudiced because of the poor quality of the advice that is given.
- There is a risk that action is not taken when it is needed and it can be difficult for a subsequent adviser to retrieve the situation.
- It may be professional misconduct and there is the risk of a negligence claim and/or complaint.

“ There was evidence that the fee earner did not understand the relevant law concerning the right to education under the European Convention on Human Rights. ” (Education)

### Full instructions

***A file record demonstrating that full instructions have been taken from the client***

“ On all files, detailed instructions were recorded in a typed attendance note. All instructions were clear and demonstrated a good grasp of the relevant issues in this type of work. ” (AAP)

At the initial appointment the adviser needs to take sufficient instructions so that they can fully understand the client's circumstances. The instructions should be:

- Comprehensive.
- Fully recorded on the file, and legible.
- Clear to another adviser who may have to work on the case.

It is essential that full instructions are taken at the start of the case. Without full instructions there is a risk that the advice given is not appropriate to the client's situation. On the basis of only a partial understanding of the case, the adviser may suggest action is taken that proves wrong or unnecessary. Important steps may not be taken.

In addition, incomplete instructions may mean that the merits advice that is given is inaccurate. The adviser's assessment of the remedies that are available and the prospects of these being achieved may be based upon an inaccurate understanding of the case.

A checklist of points to cover when taking initial instructions may be helpful to ensure nothing relevant is missed. For example, a standard questionnaire used at the initial appointment can contain prompts for the essential information that is needed.

There does not need to be a typed note of the instructions, but the file must fully and legibly record the client's instructions. Those instructions need to be confirmed in writing to the client (see Part B) and the initial letter may be a sufficient record of the instructions.

“ On the majority of files, instructions appear to have been taken by someone other than the fee earner. Although these instructions are recorded in a typed note, they lack sufficient detail and, in particular, fail to record what the client is seeking to achieve. ” (AAP)

## Linked issues

***Evidence that all relevant matters have been identified and acted upon appropriately***

“ The files demonstrated close liaison and a good referral system between different departments of the firm. ” (Public Law)

On the basis of the client's full instructions the adviser can consider whether there are other issues that need to be dealt with, apart from the presenting issue.

The client cannot always be expected to know what may be relevant to their case, or that they may be entitled to additional assistance on matters related to their case. For example, when giving advice on a client's care needs, issues about housing may be equally important.

It is the adviser's responsibility to identify such matters. If a matter is within the adviser's area of expertise, the adviser should deal with the matter. If not, the adviser should refer the client, either internally or by contacting an appropriate agency, or by signposting the client by giving them details of relevant agencies.

The client's instructions may reveal other issues with which legal advice would be of assistance, for example a client with a potential claim against the police may mention he was recently dismissed. In such a case, the client should be told they may need advice on that issue, and be referred or signposted.

The value to the client of the service received is much greater if the adviser can identify all the advice that is needed together with how this can best be provided.

“ The client in the case of N was not given advice on community care issues, even though it was clear from the papers that the parents were having problems and needed some respite provision. ” (Education)

## Part B: Initial Action

### What are peer reviewers looking for?

- An initial letter to the client that records clearly the instructions received, the advice given and the action agreed to be taken.
- A record of advice about limitation and any time limits and key dates.
- Evidence that any urgent matters have been dealt with.

### Initial letter

***An initial letter to the client that records clearly the instructions received, the advice given and the action agreed to be taken***

“ The initial retainer letters were of a good standard, identified the relevant facts, alternative courses of action, who the claim was against and on what basis, what compensation could be claimed, welfare benefits, how long the case would take, action the adviser would take, action the client needed to take, limitation, liability for legal costs and identification of the fee earner and his/her secretary. ” (Clinical Negligence)

Within a reasonable period of the initial meeting, a letter should be sent to the client recording clearly the instructions that have been received, the advice that has been given and the action agreed (by the client and the adviser). It is helpful to both the client and the adviser if this letter is sent promptly after the initial meeting.

A detailed record of the instructions received from the client should be provided so that if the adviser has misunderstood any of the instructions or recorded them inaccurately, this can be dealt with at an early stage. Sometimes, the process of setting out the instructions received means that the adviser will realise that there are gaps in the information that need to be filled.

Although a detailed record of the instructions is needed, the record does not have to be in the body of the initial letter. It is just as appropriate to send the client a copy of a typed initial attendance note that records the client's instructions, or to prepare a statement or proof of evidence setting out those instructions. The important thing is that a full record is provided and that the client has the chance to check that the record is accurate and complete. It is good practice specifically to invite the client to check the record and to sign and return one copy of the initial letter (or attendance note, proof or statement) to confirm any amendments that are required (or that no amendments are needed).

If instructions are not recorded for the client in this way there is the risk that the case proceeds on the basis of information that is incomplete or incorrect. This may affect:

- The merits advice that is given.
- The strategy for the case that is determined.
- The contents of any documents that are drafted.
- Any assessment of whether or not immediate action is required.

In the initial meeting with the client it is likely that some legal information or advice will be given about the relevant law, the remedies that may be available, the chances of successfully pursuing those remedies and the procedure involved in doing so. This can be a lot of information for a client to absorb, particularly if they are nervous, anxious, vulnerable or unwell. The initial letter is an opportunity to set out the advice in a clear and logical way that can be easily understood. It is also an opportunity to explain aspects of the terminology, law or procedure that are unfamiliar and can appear complex.

Some of the legal advice can be provided by way of standard letter or fact sheet and this can be a good means of providing thorough advice in a cost effective way. It is important to ensure that the client only receives information and advice that is relevant to their circumstances and concerns their specific situation. Irrelevant information or advice can be confusing and off-putting for the client, and if advice is not clearly applied to the client's specific situation, it is of limited value.

Following the initial meeting it may well be the case that further information is needed from the client or a third party before detailed advice can be given about the most appropriate remedies and the prospects of obtaining these. However the advice that has been given should be recorded together with an indication as to when it will be possible to give further or fuller advice.

It is frequently the case that following the initial meeting immediate action needs to be taken by both the client and the adviser. The client may need to obtain and provide further documents. The adviser may need to contact a third party with the client's authority (for example, a previous adviser or GP) to obtain information that is needed before fuller advice can be given. Sometimes the information that the client has been able to provide is sufficient and the adviser can immediately pursue action on the client's behalf, for example by writing to the police about a complaint. It should always be clear what is to be done, by whom and when, so that clients know what they can expect or what they need to do themselves.

A well written and comprehensive initial letter is:

- A useful starting point for any adviser who has to deal with the file, to determine what the case is about and what steps are being taken.
- A point of reference for the client to which they can refer throughout the case, particularly in relation to the advice about the law and procedure.

- A way for the adviser to consider and set out the strategy that is to be adopted.

For solicitors, Rule 2 of the Solicitors' Code of Conduct 2007 sets out responsibilities for client relations and most of what is set out in Rule 2.02(1) is covered by the form of initial advice letter that has been described. There is however further information that must be given to clients, for example about the status of the adviser and supervision (Rule 2.02(2)), cost (Rule 2.03), and complaints (Rule 2.05).

Similarly the Specialist Quality Mark sets out in detail the initial information that must be given to the client.

Sometimes all of this information is dealt with in one initial letter. There is nothing necessarily wrong with this but it can mean that the client receives a very long letter. This can require the client to make some effort to identify the information that is of particular importance to them at that time.

Sometimes a letter tailored to the client's circumstances and a separate letter providing standard information may work better for the client. For example, the Law Society's guidance (Practice Note dated 16<sup>th</sup> September 2010) is that separate terms and conditions should be prepared if the client care letter will exceed three pages, and that headings and bullet points should be used to break up blocks of text and highlight points.

At the end of a long letter, a summary for the client of the key points can be helpful.

“

**Initial client care letters should routinely record the advice which has been given, to include advice on the procedure involved in relation to any specific remedy suggested.**

”

*(Education)*

## **Time limits and key dates**

### ***A record of advice about limitation and any time limits and key dates***

“

**There was no evidence that the supplier had any system for identifying and recording limitation dates at any stage, for example no client was advised of any time limit for bringing a civil action against the police**

”

*(AAP)*

The extent to which limitation periods, time limits and key dates are important varies by area of law. For example, advice about limitation is essential in claims for clinical negligence and claims in tort against the police, and for educational negligence claims. Immediate advice about relatively short time limits is of critical importance in dealing with judicial review, Tribunal claims relating to employment and Special Educational Needs, and with complaints against the police. Key dates may arise in relation to the dates of hearings or dates for the filing of evidence in all cases.

In each case what is essential is that the adviser considers and advises upon the possibility of a relevant date or time period from the first meeting with the client onwards. It may sometimes not be possible at the start of the case to determine what time period applies or how it will be calculated. If so the adviser should make clear to the client what information is needed to clarify this and how it will be obtained, and the adviser should err on the side of caution in determining the likely date.

In relation to any time limit or key date what is important is that:

- The relevant date is recorded for the client in writing at the start of the case.
- The written advice to the client records the actual date and does not require the client to calculate the date, for example by working out a period of time from a date of dismissal – this is especially important for shorter time limits which may be very close to the date of first instructions.
- The date is clearly recorded on the file as a prompt for the adviser dealing with the case.
- The date is recorded in a central diary system so that the adviser is reminded to take the necessary action in time (and so that if for any reason the adviser with conduct of the file is unable to take action, for example because of illness, the organisation is aware that action needs to be taken).

The importance of dealing with limitation periods and key dates cannot be overstated. A failure to recognise and act upon such a date may result in the client losing a remedy to which they would otherwise have been entitled and even lead to a claim of negligence against the adviser. At the very least, the client will be exposed to worry, uncertainty and delay.

“ Some of the files demonstrated a failure to apply the correct law in relation to the limitation period and/or give clear advice thereon to the clients. ” (Clinical Negligence)

## Urgent action

*Evidence that any urgent matters have been dealt with*

“ The Centre was able to react quickly and effectively when urgent action was needed. In the case of B the clients consulted the Centre on the day of an admission appeal hearing and were given full advice as to presentation of the appeal leading to a successful result. ”  
(Education)

There are various situations in which urgent action is needed, for example when instructions are first received:

- Immediately before a Court hearing
- Shortly before the expiry of a time limit or limitation period
- When evidence needs to be preserved and there is a risk that it will be lost without immediate action
- When the client’s position will be prejudiced if immediate action is not taken, e.g. to prevent eviction or because they (or their children) are at risk of violence

In each case what is important is that the adviser:

- a) Recognises the need for urgent action. This may mean referral to a more senior colleague if a junior adviser takes initial instructions. It is also essential that sufficient instructions are taken to understand fully the client’s situation, to be able to advise about the immediate remedies available or action required.
- b) Takes the action that is needed, where necessary using devolved powers to achieve this.

It is often the case that a failure to take immediate action will prejudice the client’s interests, which as a result is likely to be a major concern.

“ Advisers demonstrated the ability to act extremely quickly where it was necessary to do so in order to protect the essential rights of their clients.....for example G - where an interim order was obtained to prevent withdrawal of social services support from a former asylum seeker and her family. ” (Community Care)

## Part C: Advice

### What are peer reviewers looking for?

- Evidence that advisers have sufficient knowledge of the relevant law
- Analysis of the client's legal situation
- Advice to the client about the likely outcome of the case
- Advice about the relevant law and procedure

### Legal knowledge

#### ***Evidence that advisers have sufficient knowledge of the relevant law***

“ There was at least one example of an excellent and creative use of the public law remedy in circumstances where, had the adviser not spotted the point, the client would have been detained in prison for many more weeks. ” (Public Law)

It would appear self-evident to say that advisers should have sufficient knowledge of the law relevant to their area of work. However there are a number of reasons that this is sometimes not the case, including:

- *Case allocation* – advisers deal with cases outside their area of knowledge or beyond their experience.
- *Supervision* – advisers lack the assistance of an experienced supervisor when dealing with new or unfamiliar issues.
- *Training* – existing knowledge has not been updated or developed to a sufficient level.

Matching the skills and knowledge of the adviser and the needs of the client is one feature of a well organised provider.

Where this does not happen, there are a number of obvious risks:

- The wrong advice may be given, with the result that the client may be prejudiced and the provider exposed to the risk of a professional negligence claim. For example, if a claim is made for which there is no legal basis, the client may be exposed to the risk of a costs order. If a time limit is missed then a remedy that was otherwise available may be lost.

- The advice that is given may be limited and not sufficient to deal with all of the issues raised by the client's case. For example, there may be remedies beyond those identified by the adviser that would assist the client.
- The quality of the advice may be reduced. Even if the advice given is technically correct, there may be strategies that might have been considered or issues that could have been raised if the adviser had a broader understanding of the relevant law.
- Issues may simply not be considered. If the adviser does not understand all of the potential legal issues, the result may be that instructions are never taken (or evidence is not pursued) on issues that might assist the client.

Evidence that the adviser lacks sufficient legal knowledge is usually reflected in advice (or a lack of advice) that prejudices the client. Conversely, evidence of a thorough understanding of the relevant law is usually reflected in a good service being given, provided that understanding is applied to the facts of the client's case (see below).

“ In B, the adviser wholly failed to identify the fact that an indefinite exclusion is unlawful, until counsel was belatedly involved. ”  
(*Education*)

## Legal analysis

### ***Analysis of the client's legal situation***

“ The file failed to demonstrate that the adviser considered the issue of consent in the light of the decision in *Chester –v- Afshar (2004)* and the crucial question of whether the client would have done anything different if she had been properly advised by her doctors. ” (*Clinical Negligence*)

From reading files as a reviewer it becomes clearer that sound legal knowledge alone is not sufficient. It is the application of that knowledge to the facts of the client's case that provides a benefit for the client and is the reason for instructing the adviser in the first place. The absence of sufficient analysis may mean that the action that is taken and the strategy that is in place are not appropriate for the individual client's case.

It is helpful for the client if the analysis that takes place is explicit. Advice needs to be given about the legal context (see advice about law and procedure below) and then the client needs to be advised about the way in which their case fits within that context.

The analysis may well take place at different stages of the case. Initially advice may be given when first meeting the client and that advice can be set out and amplified in the initial letter to the client. At that stage there may be further information and

evidence that is needed before the analysis can be completed and this should be made clear to the client. However the absence of some information does not mean that the analysis should be entirely deferred. A preliminary view can and should be taken and conveyed to the client.

This means that in advising in writing, standardised materials alone can never be sufficient. Well written information sheets or standard letters are of great assistance in providing information in a cost effective way and provide a resource that the client can refer to throughout the case. However advice that is specific to the circumstances of the client's case, "tailored" to their specific situation, needs to be added (either to a standard letter or in a separate letter) so that the client has a basis on which to understand where their case fits within the legal framework.

It is important that advice is given in writing. The issues and the terminology involved are likely to be at best unfamiliar and at worst confusing and intimidating, for the client and advice that is only given orally may be difficult to retain.

The legal analysis that takes place needs to extend not just to the advice given to the client but also to the letters that are written on the client's behalf and the documents that are prepared. Letters that are sent are much more likely to be effective if the underlying legal analysis is sound. The quality of documents that are prepared will be enhanced if the contents deal with all of the issues that are legally relevant in the client's case. For example, the necessary analysis will enable a witness statement to be focused on the relevant legal issues.

“ In initial letters to the local authority, the advisers frequently refer to a battery of statutory provisions some of which are clearly not relevant to the circumstances of the case. ” (Community Care)

## Merits advice

***Advice to the client about the likely outcome of the case***

“ In C, the supplier provided thorough, comprehensive and measured letters of advice explaining why legal steps were unlikely to succeed. ” (Education)

The result of the legal analysis should be that advice is given about the likely outcome. The quality of the analysis will be reflected in the extent to which clear and accurate merits advice is given. Having sought legal advice, the client will want to know what can be achieved and whether this is likely to be achieved.

Merits advice is rarely certain, but should be explained and expressed as clearly as is possible:

- At the start of the case, it may be difficult to give more than a broad indication, but it is still helpful for the client to have that indication.

- As further evidence is received and information obtained, the advice given about merits can be expanded so that clients receive full advice about their chances of success. There is no difficulty with making clear that the advice given may be subject to change, provided that the factors that might lead to a change are identified.
- When key evidence is received (for example, an expert's report) there should always be advice to the client as to whether as a result the assessment of merits has changed.

A lack of written merits advice can have serious consequences both for the client and the adviser. Without advice about what is likely to be achieved the client cannot make an informed decision as to whether the time, cost and risks of the case are justified. The client may assume that since the case is progressing they are likely to succeed and their expectations may be much higher than is justified. A failure to manage these expectations may lead to disappointment for the client and if the adviser cannot evidence the advice that was given about merits, it may be difficult to deal with any complaint that follows.

A key stage for merits advice is when a settlement proposal is made or received. The client should be advised:

- Whether the proposal is reasonable.
- Whether an improved settlement might be obtained.
- What the risks are of rejecting the proposal together with the potential benefits of proceeding.

This advice should be recorded in writing.

It is, of course, the client's decision as to whether an offer should be accepted or rejected, but the client can only make an informed decision on the basis of full advice.

Merits advice is important not just for the client but also to ensure that the provider complies with all duties under the Legal Aid scheme. An adviser needs to apply the sufficient benefit test in Legal Help cases, and to give reliable and continuing advice about the prospects of success to the LSC in certificated cases.

**“ Clients are frequently given no advice about the prospects of actually obtaining services, as opposed to advice about the prospect of obtaining an assessment, which is rarely in doubt. ” (Community Care)**

## Advice about the relevant law and procedure

“ There was good use of precedent letters advising clients on all aspects of the Special Educational Needs and Disability Tribunal and judicial review procedures. ” (Education)

Any advice given to the client should be based on a sound grasp of the law and procedure. The adviser must therefore provide clear advice on how these apply to the client's case. For example the client cannot be expected to understand the legal analysis that has taken place and the merits advice that is given without some information about the legal framework.

As mentioned, information and advice about the relevant law can often appropriately be given in standard form. However, standard letters and fact sheets work best when:

- Advisers ensure that they are fully familiar with the contents – there can be a tendency not to check through a document that is routinely used.
- Advisers are able to remove paragraphs or sections that are not relevant to the individual client – it can be difficult for clients to know what relates to their case when presented with a mass of information, some of which is relevant and some of which is not.
- Set out in an accessible and clear way, avoiding the use of jargon and terminology that is not explained – the use of headings, bullet points and numbering can all break up information so that it can more easily be understood.
- Updated regularly – within the provider organisation it should be clear who has responsibility for checking and updating standard letters at regular intervals to reflect changes in the law or procedure. Advisers should be alert to the possibility that recent changes might not be reflected in standard information.
- Used appropriately - a fact sheet that is suitable for most clients may not be suitable for some. For example the written information provided to a client with learning difficulties will need to be expressed in language that differs from the language used in a standard letter. Advisers need to ensure that standard information is not used when it is unlikely to be fully understood or may confuse the client.

The same considerations apply to information that is provided about the procedure that will apply. Having advised the client about what can be achieved, the adviser also needs to inform the client about how it will be achieved and the procedural steps that will be involved. This should include an indication of the likely timescale.

An overview of the whole procedure and timescale at the start of the case provides a resource to which the client can refer back and which helps the client to understand what is likely to be required of them and when. Where it is uncertain whether the

client wishes to take any action, it may not be necessary to immediately provide full information about the procedure that would apply were the matter to progress. This might be more appropriately given when it is clear that the client wishes to proceed.

Any timescale that is given needs to be updated as the case progresses, and the client advised of the “next steps” as different stages of the case are reached. If there is a change from the anticipated procedure, for example following a hearing, then the client should be informed. If different procedural options exist, then the client should be informed of these, and advised about the merits of each.

“ Where a particular remedy, such as an appeal to SENDIST, an independent appeal panel or an admissions appeal panel was recommended, there was no record of clients being advised as to what this involved in terms of timetable, procedures, hearing format. ”  
*(Education)*

“ In S, the supplier did not advise the client as to the legal framework governing choice of schools for children with statements of special educational needs. ” *(Education)*

## Part D: Work done

### What are peer reviewers looking for?

- Evidence that the adviser has considered all of the options and pursued the appropriate course of action
- Evidence that the adviser has gathered, reviewed and considered all necessary evidence
- Documents which are well drafted and address the relevant issues
- A file record that shows all necessary steps have been taken in the case
- The best possible outcome was achieved

### Strategy

***Evidence that the adviser has considered all of the options and pursued the appropriate course of action***

“ The file of S demonstrated good consideration of tactics in relation to obtaining a college placement for an autistic child needing continuing care and education. ” (Education)

The adviser should consider the various courses of action that could be taken in a case, and advise upon the correct strategy for that particular case and that particular client.

The strategy adopted must:

- Take into account law, practice and procedure
- Be adopted as a result of careful consideration of all of the available options
- Be discussed with the client and be tailored to their needs
- Be reviewed throughout the progress of the case
- Be likely to obtain the best result for that particular client

It is essential that the adviser embarks on the correct strategy at the outset of a case. It can be difficult, and sometimes impossible, to get a matter onto the correct track once it has gone off in the wrong direction.

An adviser should always consider discussing a case with a more experienced colleague if they are not familiar with the point in issue. Even experienced advisers may benefit from discussing cases with colleagues.

In more complicated cases Public Funding may be available in order to obtain counsel's opinion as to the best approach to take in a case. Where appropriate, counsel's advice can be obtained as a disbursement under Legal Help.

The internet is a useful tool for accessing legal resources, and websites relating to specific areas of law often have helpful blogs and discussion forums. On many of these a question can be posted. Sometimes quite experienced advisers will respond. However all information and advice is necessarily the responsibility of the adviser and the provider organisation. Any advice must be carefully checked before being adopted.

An adviser should not adopt a standard course of action for a particular type of matter without giving some thought to other options. In many cases, an established course of action will be the best choice for the client, but in others there will be factors that mean a different approach is necessary. The adviser should be aware that success in one case following a particular strategy will not inevitably mean success in similar cases adopting that same strategy.

The needs of the client should always be taken into account when deciding upon a course of action. The adviser should never assume that the client wants a particular outcome. For example, the client may be more concerned about obtaining a full explanation or an apology rather than compensation.

The adviser should be aware of the needs and abilities of the client. For example, some clients may be so scared of going to court that it may be in their interest to accept a lower offer of settlement rather than risk a court hearing, even in a strong case. Another client may want matters resolved quickly and so not want the adviser to pursue an option that would secure greater benefit but take longer.

In such cases, so long as the adviser has fully advised the client of the advantages and disadvantages of the different options, then the client's decision should be respected. However, the adviser should be alert to any signs of duress or undue influence or that the client lacks capacity.

The adviser should periodically review the case and adapt the strategy as necessary. The client should be kept advised of all developments in the case, and any proposed change in strategy should be discussed with them.

“ **Some of the files demonstrated a failure to consider other courses of action.** ” *(Clinical Negligence)*

## Evidence

***Evidence that the adviser has gathered, reviewed and considered all necessary evidence***

“ Evidence was seen on several files of attempts to gather information from third parties to assist in advising the client. ” (AAP)

The success of a case depends upon the evidence that is available. Full evidence should be obtained. The adviser must:

- Consider what evidence is needed.
- Consider what evidence there is.
- Gather any further evidence required.
- Choose an appropriate expert when needed.
- Draft an appropriate letter of instruction to the expert.
- Review the case following consideration of each element of new evidence.
- Advise the client of any change in strategy and merits advice following receipt and consideration of evidence.

Evidence can include:

- Documents that must be disclosed, even if unhelpful to the client’s case.
- Documents that provide background to the case.
- Documents that support the client’s case.
- Documents that do not support the client’s case.
- Expert evidence.
- Documents to be obtained from the opponent.
- Documents to be obtained from third parties.
- Witness statements from the client.
- Witness statements from others who may support the client’s case.

The client cannot be expected to know precisely what information or documentation is relevant to their case. It is not sufficient to tell the client to provide ‘all relevant documentation’. The adviser needs to be specific in their advice to the client, or

there is a risk that the adviser will not be provided with full information and documentation from the client.

The client needs to be told that they must provide the adviser with all evidence in their possession, even if it appears to be unhelpful to their case. The client should be told of their duty of disclosure. On a practical level, the client should be advised that it is better for the adviser to know about weaknesses in the case as soon as possible, and so have the opportunity to mitigate them, than to have to exercise damage limitation if adverse evidence comes to light later in the case.

The adviser needs to consider the strengths and weaknesses of the case and decide what additional evidence is required. This could be information to support the client's case. It could be information to assess whether or not there is any merit to the client's case. The more evidence there is, the better the adviser can assess the case and advise the client.

If expert evidence is required, the adviser needs to choose the right expert. It can take time to locate an appropriate expert, and it may take some time before that expert is able to see the client, or otherwise work on the case. Consideration of whether expert evidence is needed is a matter that should be addressed as soon as possible. If it is left too late, it may not be possible to obtain the evidence needed.

The adviser needs to ensure that the letter of instruction to the expert is properly drafted. Without a carefully drafted letter of instruction the adviser may end up with little that addresses the relevant issues.

The adviser needs to examine thoroughly all additional evidence received during the course of the case. It is not good practice for an adviser to put a lot of time and effort into the case at the outset, but devote insufficient time as the case becomes older and new instructions are given priority.

The adviser needs to review the case upon receipt of new evidence. The merits of the case may have altered. The strategy adopted may need to be changed. The client will need to be updated on the progress of their case and any proposed changes to the strategy will have to be discussed.

It is not sufficient to advise the client of new evidence received by, for example, simply sending a copy of the expert's report and asking for the client's further instructions. It is the adviser's responsibility to interpret and explain the evidence to the client, and the implications of that evidence for the client's case.

Gathering evidence can be time consuming. Interviewing witnesses and drafting witness statements takes time. Finding and instructing an expert can take time. Consideration of evidence can be time consuming. There can be pages of badly handwritten documents, medical records going back many years, dense and technical experts' reports to decipher. Nonetheless, all necessary steps with regard to evidence should be taken in order that the adviser can properly assess the merits, fully advise the client and obtain the best outcome possible.

“ On a number of files, there was a failure on the part of the adviser to consider what further evidence was required and how to obtain it. ”  
(AAP)

## Drafting of documents

***Documents which are well drafted and address the relevant issues***

“ (The provider should consider) use of a precedent pre-action protocol letter to ensure full compliance with the pre-action protocol, and to remind advisers to set out their analysis of the statutory body's unlawful behaviour. ” (Community Care)

Documents should be:

- Clear and easy to read.
- Follow a structured format.
- State clearly what the purpose of the document is.
- Tailored to the circumstances of the case.
- Accurate.

A case can be damaged by poorly drafted documents. Poor drafting can unnecessarily expose weaknesses in the case, give the impression that the adviser does not know what he or she is doing, make the opponent more confident of their case, not make it clear to the opponent what remedy the client is seeking, and generally have an adverse impact on the outcome of the case.

It is not unusual to see a letter of claim containing a detailed exposition of the law and a full chronology of events, but without stating what the particular issue of law is in the case, what the client is seeking to obtain from the opponent, and what the client is asking the opponent to do.

It can be useful to review a letter of claim once drafted to ensure that the main points have not been lost within a mass of detail, or omitted entirely. In some circumstances, it may be helpful to ask a colleague to read the letter to check for those points. Sometimes a fresh eye can spot something that someone familiar with the document may miss.

There is no point in reinventing the wheel. Colleagues may have useful precedent documents that can be adapted for use in other cases. The adviser can build up their own library of precedent documents. Care must be used with precedent documents to ensure that they are relevant to the circumstances of the case. Used thoughtfully however, precedent documents can be a useful tool to the busy adviser.

The adviser should always consider the recipient of the document. The adviser should avoid using jargon and technical terms unless they are necessary and he or she is sure that the recipient will understand those terms.

The act of drafting a document, such as a letter of claim or a letter of advice to the client, can be an opportunity for the adviser to be sure that he or she has a full grasp of the facts and issues in a case. Sometimes the reason a particular document is proving difficult to draft is because the adviser does not have a full understanding of the issues.

The adviser should consider asking the client to read a document in draft before the final version is dispatched. This is particularly the case when the document contains a statement of the facts of the case. The client is likely to spot any factual inaccuracies in the document.

“

**Letters of claim were inadequate, often premature, insufficiently detailed and did not properly set out the basis of claims in law.**  
(AAP)

”

### **Was the extent of the work carried out sufficient?**

***A file record that shows all necessary steps have been taken in the case***

“

**The adviser attended a complaint interview with the client, clearly recognising the importance of this, together with the likely effect on any future civil claim.** (AAP)

”

There is a balance to be drawn between taking all possible steps on behalf of a client, and taking all steps that are necessary and reasonable.

The adviser's duty to the client is to take whatever steps are necessary and reasonable. The adviser is not required to do every single thing that could possibly be thought of that may assist the case. The adviser has to consider many factors including:

- The importance of the case to the client.
- The benefit that the particular course of action may bring.
- The likelihood of that benefit being obtained.
- The costs implications of taking that course of action.

The adviser must manage the client's expectations. For a client, this case may be the first, and possibly only, time in their lives that they are involved in court or tribunal proceedings. It may be of the utmost importance to them, and in some circumstances can have a profound impact on their future and that of their family.

The adviser must recognise this and be prepared to explain why the client's request that a particular course of action be followed is not pursued.

Even though it may appear obvious, the client may not realise that the more work the adviser does on their behalf, the higher the costs will be. This will affect a legally aided client because:

- They may be liable to pay their costs because of the statutory charge.
- The cost/benefit criteria limit the amount of work that can be done on the client's behalf.

The more understanding a client has about costs, the more likely they are to accept that a particular course of action cannot be justified.

The adviser should consider what action can be taken that may assist the client. For example, if the client has to attend a meeting or hearing unrepresented, the adviser could draft a submission or statement for the client to use at the hearing.

The client should be advised of action that could be taken, but that the adviser cannot justify doing. The client should be given the option of taking that action themselves. The adviser should not avoid telling the client about these additional steps, simply to avoid what may be a difficult conversation as to why they are not taking that step.

Many advisers are under time pressure and may know that they are not dealing properly with a case. They may feel that they only have the time to do the bare minimum but believe that this is better than nothing. This is not correct. A poorly managed case can be worse for the client than no assistance at all, and prevents the client from seeking alternative assistance from an organisation that does have sufficient time and expertise.

**“ The whole reason for the client approaching the solicitor was that all attempts to recover property from the Officer in the Case directly had failed. The client was advised to contact the Officer in the Case. The file was closed. ” (AAP)**

## Were the outcomes achieved the best that could reasonably be achieved in the circumstances?

“ The case resulted in excellent settlement terms for the client.  
(*Clinical Negligence*) ”

An adviser cannot be expected to get a good outcome for the client in every case, or to always get the outcome the client wants.

The duty upon the adviser is to get the *best possible* outcome for the client, taking into account all of the circumstances of the case, and the needs and wishes of the client.

For example, a client may want to get her child into a particular school, in circumstances in which the child is not eligible to go to that school. Here, the adviser cannot bring about the result the client wants, but could not be said to have failed in obtaining the desired result.

The adviser should explain clearly to the client why the desired outcome is not achievable, give the client the opportunity to ask questions, and advise the client of any options that may be available to them. For example, in a public law matter involving a local authority, the client may not have grounds for judicial review, but should be advised of the right to complain to the authority, and then to the Ombudsman if necessary.

In some circumstances a strong case may end with an unexpectedly bad outcome. This may be in no way the fault of the adviser. Similarly, a case that appears weak may end positively. Litigation is unpredictable and a particular outcome can rarely be guaranteed.

The adviser's duty is to give the client good advice on the prospects of success, explaining the outcomes that may be achieved. This advice should be reviewed throughout the case.

“ In almost all of these files there was a positive outcome for the clients. The advisers understood the nature of the legal issues being presented and took immediate action to resolve the problems presented.  
(*Public Law*) ”

“ The Law Centre having become very adept at generating benefit income, having benefit overpayments reduced or written off, often entirely removing the threat of possession proceedings.  
(*Public Law*) ”

## Part E: Communication

### What are peer reviewers looking for?

- Evidence that clients are updated and advised about the progress of their case on a regular basis.
- Advice to clients about the funding of their case.
- Communication that is appropriate for the client, particularly vulnerable clients or those with additional needs.
- Effective and accurate communication with third parties.

### Regular updates

***Evidence that clients are updated and advised about the progress of their case on a regular basis***



The fee earner maintained regular contact with the clients advising them of most developments as matters progressed. (Education)



There is often a flurry of activity when instructions are first taken. An advice letter is sent to the client, any immediate action that is needed is taken and letters are sent to third parties on the client's behalf. Things may then go quiet and there should be evidence on the file that:

- Advisers maintain regular contact with clients after the initial appointment; and
- Contact with the client includes advice about the substance of any developments as they occur.

There is no need to send letters to the client at pre-determined intervals and if the client has been told that there is likely to be a period of delay, for example while an expert's report is obtained, then there is no difficulty with a longer period without contact being made. However there should be systems in place to ensure that the file is reviewed on a regular basis so that it is apparent when the adviser last contacted the client, whether there have or should have been any developments since then and whether further contact with the client is needed.

Informing the client of progress does not just mean sending copies of documents as they are received. Doing this without advice is potentially confusing and, if the contents of the document appear negative, distressing for the client. Documents should be accompanied with a letter that includes:

- A summary of the overall contents of the document that has been received, unless the contents are clear and self-explanatory.

- A request for the client's instructions on any new issues that are raised.
- Advice about the effect of the document on the case. If the document alters advice previously given about the action that is needed or the adviser's assessment of merits then this should be made clear.
- Details of any action to be taken in response to the document by both adviser and client.

There may be occasions on which it is more appropriate to meet with the client to discuss the contents of a document, rather than send it out to the client. However the advice that is given in a meeting should be confirmed in writing for the client's benefit.

It may be sufficient to provide a routine update by telephone. More important information can also be relayed by phone, for example, to advise the client when an imminent hearing date is received, but this will also need to be confirmed in writing.

In most cases the client should be given copies of significant letters and documents sent and received. If in a particular case there are reasons for not doing so, then those reasons should be recorded on the file.

“ The supplier forwarded to the client correspondence received from the other side, without any advice or explanation as to the implications or consequences for the matter in issue. ” (Education)

### Advice about Legal Aid and funding

#### *Advice to clients about the funding of their case*

“ More training should be given to advisers on the technical requirements for successful legal aid applications, with a system for checking to ensure that all relevant documents are included, and forms are properly completed and signed. ” (Education)

Both the Specialist Quality Mark and the Solicitors' Code of Conduct 2007(Rule2.03) ([www.legalservices.gov.uk/CLS/Quality and performance/Quality Mark/Documents/Specialist Quality Mark Standard – 2010 pdf](http://www.legalservices.gov.uk/CLS/Quality%20and%20performance/Quality%20Mark/Documents/Specialist%20Quality%20Mark%20Standard%20-%202010.pdf) and <http://www.sra.org.uk/rules/>) contain detailed provisions about the information that needs to be given to clients about costs and funding, both at the outset of the case and then at regular intervals. Those provisions will not be repeated here and peer reviewers do not audit compliance with these rules or the costs that are claimed.

However issues about Legal Aid and funding regularly appear in peer review reports, where they impact upon the quality of the service that the client receives.

It is important that the Legal Aid scheme is properly understood and administered so that clients get the fullest use of the help that is available. A lack of understanding can sometimes mean that applications for different levels of funding are not successful or are delayed, or that the extent of the work is limited unnecessarily. An understanding of when the use of devolved powers is justified can mean that cases are progressed more quickly and effectively. The client should always receive advice:

- About the extent of the work that is covered (for example whether representation will be available), including an explanation about whether different levels of funding may need to be applied for to cover different stages of the case. It is a cause of particular concern when work is not done because the adviser misunderstands what is covered by the available funding.
- That is accurate and up-to-date. References still appear in standard costs letters to further Legal Help work needing authority from the LSC, to a time limit of 2 hours applying or to a cost limit of £500.
- About the disbursements that are covered under the Legal Aid scheme and those that are not and for which the client may be responsible. Where clients are charged for disbursements that are covered by Legal Aid this is always a serious concern but it is also important that clients are given information well in advance about the likely cost and benefit of any payments that they may be asked to make.

Where the Contractual or Statutory Charge may apply it is essential that the client is given full information about the likely cost of the case, that this is reviewed on a regular basis and that information is given about the actual costs incurred as the case progresses. This should include information about the cost and potential benefit of a proposed course of action.

It is also essential that clients are given clear advice about:

- The circumstances in which they might be liable for the costs of the other party, if the case is unsuccessful. Clients need to have full information about the risks of litigation, as well as the potential benefits, in order that they can make an informed decision about how to proceed.
- The circumstances in which they might be liable for their own solicitors' costs, for example in the event of revocation or if the claim succeeds but costs are not recovered fully on an inter partes basis.

Costs and funding are complex issues often dealt with in standard letters. The problem is that these letters tend to cover all possible permutations of costs issues with the result that clients receive excessive and confusing information. For example, a client receiving Legal Help does not need to know the different consequences of revocation and discharge. It is important for clients to receive information that sets out clearly the funding and costs issues that arise in their particular case.

“ In a number of cases, the solicitor advised a client receiving assistance under the legal help scheme of the need for independent reports but did not advise that funding under the scheme may be available. ”  
(Education)

### Appropriate communication

**Communication that is appropriate for the client, particularly vulnerable clients or those with additional needs**

“ There was no indication of consideration being given to accommodating her problems by offering home visits or dealing with her more by telephone. ” (Education)

Correspondence, other communication and advice should all be tailored to meet the client’s needs and abilities. This applies to all clients, and advisers should try to ensure that letters are clear and easily understood, without the use of unnecessary or confusing legal language or jargon. The risk otherwise is that clients do not understand the advice that is given and so cannot provide the information and instructions necessary for the case to progress.

Advisers should be aware that even some clients whose first language is English may have difficulty with either reading or writing and this should be checked, sensitively, with the client. With knowledge of any such difficulty, the adviser can make sure that there are appropriate arrangements in place for the client to receive and respond to correspondence, or for the client to be updated in a different way (for example, by telephone).

As well as considering the language used in written communication, advisers should consider the language that is appropriate when meeting with clients. Language that is appropriate when speaking with other advisers may not be easily understood by clients. Clients should be encouraged to ask if there is anything that they have not understood.

There are some situations in which communication will be a particular issue, for example:

- (a) Clients whose understanding of English is limited – there should be evidence of an appropriate enquiry and that an interpreter has been arranged where required. It is often not appropriate to rely on a family member to translate, since their language skills may be insufficient, there may be a potential conflict of interest or the family member may choose to filter the advice and/or instructions. It is not expected that letters will be written in the client’s first language but there should be evidence of some enquiry as to whether the client has somebody who will translate letters and particular care needs to be taken to make letters as clear and straightforward as possible. Some advice will have to be dealt with in meetings with an interpreter present so that the adviser can ensure that the client has received necessary advice or provided essential information.

- (b) Clients with a disability who require a reasonable adjustment – there should be evidence of an appropriate enquiry as to whether a reasonable adjustment is needed to how the adviser communicates with the client. This could involve greater use of face to face meetings or telephone advice, as opposed to written advice; changing the presentation (as well as the content) of advice letters, for example by increasing the font size; or liaison with support workers when providing advice. The clients for whom adjustments may be necessary include those with a learning difficulty or disability, a mental health condition or a long-term health condition.

It is important that the adviser makes appropriate enquiries about all clients and their needs, considers how these might best be met and takes the steps necessary to achieve this.

“ (The supplier) wrote to clients confirming instructions with excessive use of jargon, and by apparently cutting and pasting from other letters... (this) resulted in a letter to a client which appears both confusing and inappropriate. ” (Public Law)

## Communication with third parties

### *Effective and accurate communication with third parties*

“ In T, the supplier handled correspondence with the client’s son’s school over bullying in a measured and careful way, to the client’s benefit. ” (Education)

Although the issues will often be different, it is equally important to ensure that communication with third parties is appropriate and effective. Third parties will include:

- Experts.
- Potential witnesses.
- Other solicitors and advisers.
- Neutral third parties from whom information is requested.

Letters sent on behalf of a client should:

- Set out the client’s position clearly and accurately.
- Use language that is professional and appropriate.
- Be clear as to the response or information that is requested.

Letters with these characteristics are more likely to be effective in progressing the client's case.

Letters of instruction to experts are of particular importance. Such letters should refer the expert to the relevant background, provide the documents that are needed for the expert to make an assessment, specify the timescale and the questions to be answered in the report and refer the expert to their duties, for example as set out in Part 35 of the Civil Procedure Rules.

Care should also be taken to ensure that letters:

- Are sent to the correct recipient – for example there is little point in a well drafted letter requesting housing benefit information being sent to the wrong authority.
- Contain the necessary authority for information to be provided – without the client's written authority in the correct form there will often be unnecessary delay before information can be obtained.

“ Many of the standard format letters to experts confuse the different elements in a clinical negligence claim. ” *(Clinical Negligence)*

“ Important communications to third parties were often drafted/corrected with care and to a good standard. See for examples the letters of claim on P, F and a detailed letter of appeal to the IPCC on L. ” *(AAP)*

## Part F: Case management

### What are peer reviewers looking for?

- Proper file organisation.
- Review of the file at appropriate intervals.
- Evidence that the case is dealt with proactively and without delay.
- Evidence that any supervision is effective.

### File organisation

“ All the files were organised in a sensible way, dividers were used to separate the different type of documents. ” (Public Law)

The file must be organised so as to make it easy for the adviser properly to manage the case, and enable another adviser to deal with the case in the event of the original adviser's absence.

A badly organised file is inefficient. The adviser and the organisation are likely to spend more time on managing a badly organised file than a well organised one.

The file should:

- Have all attendance notes and correspondence filed in chronological order.
- Have all other documents filed in an ordered fashion.
- Have key dates and limitation dates marked clearly on the file.
- Be clearly marked with the client's name and file reference number.
- Be clearly marked with details of any linked or otherwise relevant files.
- Follow a standard file organisation format.
- Be up-to-date.

Ideally, attendance notes, whether of telephone or face to face attendances, should be placed on the file as soon as the attendance has concluded.

All file notes, such as attendance notes and preparation notes, must be filed in chronological order. It is generally accepted practice to have the most recent file

note at the front of the file. All correspondence to or from the organisation should also be filed chronologically, with the most recent letter at the front of the file.

Generally, correspondence and file notes are filed together, and not in separate sections. This makes it possible to see what has happened most recently by looking only in one place, rather than several. However, some organisations find it more convenient to separate these sections out. So long as the filing method is clear and consistent either system is satisfactory.

The file should record the date all correspondence and documents are received by the organisation. It can be material to the case to know when the adviser received a particular item. For example, a client may provide a decision letter to the adviser after the last date when the client can appeal that decision. If the adviser is unable to prove when the document was received, they could face a negligence claim, or at least, a complaint.

Whilst it is essential to have an effective central diary system for recording key dates and limitation dates, such dates should also be clearly marked on the file. This serves as a reminder to the adviser of forthcoming key dates. It assists someone who has to deal with the case in the absence of the adviser quickly to ascertain any imminent deadlines. It can also be a useful backup for any failure of the diary system.

It will assist those who have to deal with the case in the adviser's absence if the provider has a standard system of file organisation, at least within each subject area.

It is important that each file is clearly marked with details of any linked, or otherwise relevant, files. Otherwise anyone who has to deal with the case in the absence of the adviser may not be aware of those files, and may take inappropriate action on the case as a result.

The adviser, or the support staff, should make the necessary checks at the commencement of the case to ascertain if there are any relevant files and mark the files accordingly at that time. Any relevant files that are opened subsequently should be marked on all other relevant files.

A case itself may generate several files, in which case they should be marked as 'file 1 out of 4', for example.

**“ There was inconsistency in file keeping with earliest documents  
sometimes at the bottom and sometimes at the top. ”**  
*(Public Law)*

## Case Review

### *Review of the file at appropriate intervals*

“ The files demonstrated that there was in use an effective diary and file review system. ” (AAP)

Advisers should review their cases at regular intervals to ensure that the case is progressed effectively. When reviewing the case the adviser should:

- Consider what further steps need to be taken.
- Consider what chasing up has to be done.
- Reconsider merits advice.
- Consider if a change of strategy is needed.

A case review may be carried out reactively in response to an event, such as the receipt of new evidence or upon consideration of counsel’s advice.

A case review may also be carried out proactively. The adviser should not rely only on reactive case reviews, or progress on the case may be delayed.

There should be a system for ensuring that files are looked at by the adviser at regular intervals. An appropriate diary system should bring the case to the adviser’s attention when necessary. The intervals between each case review will depend on the circumstances of each case, and are likely to vary during the life of each case.

When reviewing the case the adviser should consider what further action needs to be taken on the case. It is important not to stick rigidly to any case plan, and to amend it as necessary. Not every development in the case will require in-depth analysis, nor will every case review require a detailed examination of the file. The adviser will have to decide how detailed the case review will have to be, on each occasion the case is considered.

The important point is that the case is reviewed at intervals that are appropriate to that particular case, and that all necessary action that is identified is subsequently carried out.

## Proactive approach and lack of delay

### *Evidence that the case is dealt with proactively and without delay*

“ Fee earners were almost always proactive with resultant minimal drift in case progression.” (Public Law)

The adviser should adopt a proactive approach to the case and not simply await events and react to them. An adviser who does not look at the file unless prompted to do so by external events is not properly managing the case.

Failure to manage a case proactively could lead to delay. As a result:

- The client may be concerned that the case is not being progressed effectively.
- The stress on the client of an ongoing case is increased.
- A key date or limitation date may be missed.
- The costs of the case may be increased.
- The outcome of the case could be prejudiced.

The adviser should:

- Carry out case reviews as necessary.
- Promptly carry out action that has been identified as necessary to be taken.
- Fully consider correspondence and documentation promptly upon receipt.
- Respond promptly to any contact from the client, opponent or third party.
- Chase up matters as soon as the ‘respond by’ date has passed.
- Not only take a step when prompted to do so by the client or the opponent.
- Not be the cause of any unnecessary delay in the progress of the case.

If the adviser deals with a case proactively, then the adviser is more in control of their work. Matters can be diarised to be dealt with at times to suit the adviser. The adviser can allow sufficient time for the piece of work to be done.

If the adviser deals with matters more reactively, he or she is less in control. Work is more likely to have to be done at the last minute if the adviser is not proactive.

Carrying out work at the last minute may compromise the quality of that work, or of other work the adviser has to do. The adviser may have to juggle commitments and priorities to be able to deal urgently with a matter which could have been completed.

Other clients may have to be let down in order that the adviser can deal with the urgent matter.

Whilst working proactively can never remove the possibility of an adviser sometimes having to drop everything to deal with an emergency, the more the adviser anticipates events and deals with them in good time, the less likely it is that the adviser will have to do things at the last minute.

The adviser should have a diary system for pursuing outstanding matters. The adviser should then take whatever action is necessary on the relevant date, or as soon as possible thereafter.

Even if it appears to the adviser that a particular step is fairly straightforward, it is still better to take that step as soon as reasonably possible. If problems do then arise, the adviser has more time to remedy the matter.

“ Where requests have been made for documents steps should be taken to diarise the file to check whether these have been received and to chase them up if they have not. ” (Education)

## Supervision

### *Evidence that any supervision is effective*

“ The file review noted that the fee earner had pursued “diligent enquiries” when clearly she had not done so. ” (AAP)

Providers will have different ways of supervising the work carried out by advisers. These may include:

- Formal supervision and appraisal meetings.
- File review in accordance with the Specialist Quality Mark (SQM).
- Sufficient access to the subject supervisor.
- Review of incoming and outgoing post.
- Monitoring feedback from clients.

Of these various methods the only one that is usually apparent to peer reviewers is file review, where the occurrence of a review is typically recorded on file.

The file reviews should:

- Deal with the substance of the file and not just check that the procedural aspects are correct. For example, a file review that records correctly that there is

sufficient evidence of eligibility for Legal Help, but not that a deadline has been missed, is of limited value.

- Identify what corrective action is needed and the time scale within which it should be carried out. This should be monitored since there is little point identifying issues that are not then dealt with.
- Contain suggestions about the strategy for the case, where these are appropriate.
- Consider whether the legal advice is correct. This will include the advice given about the law and procedure as well as advice on merits.

The issues that are identified on a file in peer review are those that would be apparent to any experienced adviser. For that reason it is always a cause of concern if reviews are carried out that do not identify issues subsequently raised on peer review.

Even very experienced advisers benefit from being subject to file review and supervision. No one can know everything about a topic, manage every case perfectly or be able to evaluate their own work effectively. Even if an adviser is sure on the law there may be tactics a colleague could suggest that the adviser has not considered.

In small organisations many advisers work to a high standard without anyone else with sufficient expertise ever looking at their files. However, the risk of bad practice going undetected will exist whenever file review and supervision by a specialist does not take place. One possibility is for an experienced adviser from another organisation to meet with the adviser, say every month, for some cases to be looked at and for general discussion of any issues arising. This arrangement is unlikely to be adequate for a new adviser, but could work for an experienced adviser.

“ The files demonstrated that the supplier conducted detailed internal reviews. ” (AAP)

“ The supplier should review its supervision system to ensure that fee earner knowledge is passed down. ” (AAP)

## Part G: Case conclusion

### What are peer reviewers looking for?

- Evidence that appropriate final advice is given when the file is closed.
- Files are closed at the appropriate time.

### Appropriate advice on conclusion

#### ***Evidence that appropriate final advice is given when the file is closed***

At the end of the case the client should be given a summary of the case to date and advised of the following:

- The outcome of the case.
- Any steps the client has to take in the future.
- Any deadlines or time limits for any outstanding matters.
- How long the file will be retained for.

It is helpful to the client for there to be a single document setting out a brief summary of the case and stating clearly what the outcome was. Although the client may well have had this explained to them before, a brief statement of what that outcome means practically can be helpful to the client. The client should also be informed about any original documents to be returned or collected.

“

**Clients were appropriately advised at the conclusion of their cases as to next steps and procedures for file retrieval.**

”

*(Education)*

Although the work the adviser is able to do on the case may have come to an end, there may be further steps that the client can take to try to resolve any outstanding issues.

“

**The final advice to clients could be more comprehensive, and should include information on additional remedies open to the client at the closure of the case, such as a complaint to the Local Government Ombudsman.**

”

*(Education)*

There may be steps that the client can, or should, take in the future, and the client should be clearly advised about those steps, with any deadlines or time limits clearly stated.

“ Final advice letters are particularly important for cases involving children with special educational needs, since clients need to be informed as to such matters as the right to ongoing provision for those needs, steps to be taken at transition phases in education, annual reviews. ” (Education)

## Case closed at appropriate time

“ Assistance to clients appears to have been routinely abandoned mid-case without any reason / any satisfactory reason having been noted on the file. ” (AAP)

The adviser must close the file at the appropriate time. It is not acceptable to close the file without there being a clear reason for doing so, and the client being advised of this.

In many cases it is obvious that the matter has concluded and that the case should properly be closed. In other cases it is not so clear, and files may have been closed on the basis that the client has not provided instructions, that continuing legal aid cannot be justified, or on occasion, for no reason that is apparent to the reviewer.

It is good practice to send the client a 7 or 14 day file closure warning letter. An adviser should be very clear with the client throughout the conduct of the case as to the consequences of failing to respond to contact. Generally, unless the client has been clearly advised of the consequences in writing, failure to respond to contact from the adviser should not result in closure of the case. A written file closure warning should be sent at least once in most cases.

The operation of a good diary system for case reviews should ensure that clients are routinely contacted for further instructions when necessary, and files can be closed promptly when it becomes clear that the client does not wish to continue with the matter.

When further legal aid cannot be justified, a letter should be sent to the client explaining this before the file is closed, so that the client has the opportunity to comment and raise any queries.

An adviser dealing with a busy case load may close the file as soon as the client fails to respond to a request for further instructions. This can lead to further work for the adviser if the case has to be reopened when the client does make contact again. It is also not good practice.

If the file is closed too early, the client may not be aware that they are entitled to further assistance and may be prejudiced by having to deal with the remainder of the case themselves.

“ The closure of the files was considered to be premature. ” (AAP)

## Part H: Conclusion

No peer reviewer looks at files with the expectation that every issue raised in this Guide is fully evidenced on every file. The advantages of the peer review process include:

- The experience that peer reviewers have – since in their day to day work peer reviewers experience the same time pressures and funding difficulties as all advisors, the expectations of peer reviewers are not set unrealistically high.
- The sampling process that is applied – since peer reviewers look at a range of the files conducted by the provider, concerns on an individual file can be mitigated where there is more positive evidence on other files of the provider’s overall approach.

Peer reviewers are particularly concerned with the quality of advice and work that clients receive. The issues dealt with in this Guide all impact on the overall quality of advice and work. They are sometimes mentioned as positive items in reports, and sometimes because it is clear that a better quality of advice and work should have been provided.

Each peer review report concludes with suggestions about how a provider might be able to improve aspects of the work that are carried out. As with this Guide, the intention is to help advisors improve the overall service that is provided for clients.

The issues addressed in a recent report exemplify this approach:

- “1. Unless there is good reason (which should be noted in the file) all clients should be given written advice.**
- 1.1. The process of drafting such advice can remind the fee earner of any information not obtained at the initial interview and to obtain this information before adopting a wrong course of action.**
  - 1.2. The process of drafting such advice forces the fee earner to focus on law and legal rights – particularly, relevant parts of the law and how they apply to the client’s case.**
  - 1.3. The letter can form a mini-case-plan to be updated from time to time if necessary.**
  - 1.4. The articulation of black letter law in such a letter helps prepare for making representations to third parties and Courts.**
  - 1.5. It can serve to keep under control the scope of what is done in the matter. It serves as a reminder of when to stop. It can also assist decisions as to whether extraneous issues constitute new matters or are part of the original matter.**
  - 1.6. It serves to increase clients’ understanding of the case (they may forget much of the oral advice) and, also, their ability to give instructions.**
  - 1.7. It can manage the client’s expectations and improve relations with the client; and**

**1.8. It can improve clients' (and anyone else's who reads it) ability to manage their affairs in the future and thus avoid further problems."**

We very much hope all the information in this guide will be found useful. Please feel free to make suggestions on how this Guide might be improved in the future and we will be pleased to review its content.

Please note that the Code of Conduct for Solicitors will change in October 2011 and all such changes should be taken into account from then onwards in reading this document.

**Please e-mail any comments or suggestions to:**  
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