



Independent
Quality Assessment
of Legal Services

IMPROVING YOUR QUALITY

A guide to common issues identified through Peer Review

Housing

Third Edition
April 2011

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 new edition of 'Improving Your Quality – Housing', 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 Housing 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 Housing work. We continue to welcome the opening up of the world of legal competence to such scrutiny and debate.

Avrom Sherr
Director of Institute of Advanced Legal Studies

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1. Has the client received clear and comprehensive advice on all aspects of their case?

Why does this matter?

The absence of any record of clear and comprehensive advice means that:

- The client may not have been properly advised.
- The client does not have a record of the advice they have received.
- Without evidence of the advice given, advisers leave themselves open to complaints and possible negligence claims.

How can I check this is on my files?

- Do attendance notes show that the client received clear and comprehensive advice?
- Was the advice confirmed in writing?
- Was the advice provided generic, without relating it to the client's circumstances?
- Has the adviser considered the client's instructions and drawn appropriate conclusions?
- Is there an over-reliance on standard letters of advice?

What will help?

- Provide adequate supervision to pick up this issue early on in a case.
- Ensure that advisers have adequate expertise in the field of work.
- Providing advisers with training.
- If the adviser is unable to provide advice to the client (i.e. for lack of information), the adviser should confirm that fact to the client in writing.
- Cross check correspondence with attendance notes to ensure that the advice has been confirmed to the client in writing.
- Ensure clients receive follow up letters confirming instructions and advice after each significant development in the case.
- Ensure that the adviser can access higher tier advice (either internally or externally).

***“Has the adviser considered
the client’s instructions
and drawn appropriate conclusions?”***

2. Has the client been advised of the merits of their case?

Why does this matter?

The client needs to be advised about the strengths and weaknesses of their case. If not advised the client will be unable to make informed decisions and may be confused as to the likely outcome of their case. All steps possible should be taken to allay the client's anxiety where it is likely there will be a positive outcome.

How can I check this is on my files?

- Do files show early advice on merits in the initial attendance note and client care letter?
- Is the merits advice clear, i.e. not vague or ambiguous such as “you have a reasonable prospect of success”?
- Is the advice on merits updated to reflect changes in the case?
- Is advice updated as different stages in the case are reached?

What will help?

- Put headings in template letters to prompt advisers to record advice on merits.
- Ensure that advice on merits is assessed in file review and supervision.

***“Is the advice on merits
updated to reflect changes
in the case?”***

3. Are advice letters tailored to each client's case?

Why does this matter?

The use of standard advice letters, that contain generalised advice and fail to address the particular client's case, means that there is a concern that:

- The client has not been properly advised.
- The advice provided may be difficult for the client to understand.
- Clients are confused about which part of the advice relates to their case.
- Consideration has not been given to the individual facts of the client's case.
- The client's case is not receiving sufficient care and attention.
- The standard advice letters may be out of date if not checked and updated regularly.

How can I check this is on my files?

- Do advice letters relate to the facts of the client's case?
- Is there evidence that clients are confused about the advice letters they have received (i.e. clients regularly seeking clarification of advice that has not been clearly explained in writing)?
- Do standard letters contain information that is out of date?

What will help?

- Provide adequate supervision and file review to pick up this issue early on in a case.
- Ensure that advice letters include a record of the client's instructions, the advice given and the action that the adviser is to take.

***“Ensure that advice letters include
a record of the client's instructions, the advice given
and the action that the adviser is to take”***

4. Has the client's housing status been correctly identifies?

Why does this matter?

Identifying the client's housing status is fundamental to identifying most of the rights the client as an occupier has. Failure to identify a client's housing status means that:

- It is likely the advice given to the client is wrong or incomplete, prejudicing the client's position.
- The adviser may not correctly identify the legal issues in the case.
- The adviser may not identify when a referral is needed.
- The adviser may not identify when an application for public funding is needed.
- In the worst case, a client could be evicted if housing status has not been identified and acted upon.
- The client's expectations may be wrongly raised if the housing status is in fact worse than advised (i.e. an Assured Shorthold rather than an Assured Tenant).

How can I check this is on my files?

- Has the client's housing status been considered and correctly identified?
- Is there evidence on file (i.e. copy Tenancy Agreement)?
- Has the client's housing status been confirmed to the client in writing?
- Has the client received advice that is specific to their housing status?
- Has the client been advised to pursue the wrong option?

What will help?

- Ensure advisers have adequate expertise in the field of work.
- Provide adequate supervision to pick this issue up early on in a case.
- Consider using checklists for taking instructions, which will guide advisers to correctly identify the client's housing status.

***“Has the client received advice
that is specific to their housing status?”***

5. Does the adviser appreciate the limits and scope of Legal Help/Help at Court and Legal Representation funding in housing cases?

Why does this matter?

Failure to appreciate the limits and scope of funding in housing cases means that:

- The adviser may not be aware that further work or representation could be done within the same, or a different funding type, resulting in an inadequate service to the client.
- The adviser’s failure to do work, or make a referral, may prejudice the client and deny them the opportunity to enforce their rights. For example, the Help at Court scheme permits representation at court in housing cases on issues of mitigation (e.g. applications to suspend warrants, submissions that a possession order should be postponed). Not appreciating that fact can result in clients being incorrectly advised that funding is not available for the adviser to represent them in court and clients having to represent themselves.
- The adviser’s lack of awareness of the Funding Code as it relates to housing cases can result in funding applications not being made and cases not being progressed. Conversely, if the adviser is doing work outside the scope of the funding/contract, this could be in breach of LSC rules or the organisation’s contract.

How can I check this is on my files?

- Has the adviser explored the availability of public funding in relation to the client’s case?
- Are clients routinely advised that the Legal Help scheme does not cover representation at court in any housing cases?
- Are there differential practises between advisers in representing clients at court?
- Are there differential practices between advisers in making referrals and/or applications for full public funding?

What will help?

- Provide adequate supervision to pick up this issue early on in a case.
- Provide training for advisers on the Funding Code.
- Ensure advisers are aware of and have access to relevant materials (for example, the Funding Code).
- Ensure that checklists are used to prompt advisers to consider funding issues.

***“Provide training for
advisers on the Funding Code”***

6. Where the adviser has been asked to provide advice on areas of housing law in which they have little or no knowledge, have they taken appropriate action to ensure that the client receives correct advice?

Why does this matter?

An adviser's lack of knowledge of particular areas of housing law, and failure to refer the case or seek appropriate support, means that:

- The client is not provided with comprehensive and accurate advice or made fully aware of their rights.
- The client may not appreciate the consequences of steps in their case (i.e. if an outright possession order is made against them, the Local Authority may not have a duty to assist them in accordance with Part VII Housing Act 1996).
- The client's case is conducted in a manner which may cause prejudice and may constitute negligence.
- The adviser has failed to appreciate the limits of their knowledge.
- The advisers are not meeting the LSC supervisor standard and the supervision procedures are not working properly.

How can I check this is on my files?

- Is the advice in attendance notes accurate and coherent?
- Have advisers failed to identify their own limitation and seek assistance if appropriate?
- Are advisers making sufficient referrals on areas outside their expertise?
- Has the adviser referred to higher tier internal/external advice where available and appropriate?
- Has the adviser accessed telephone specialist support services?
- Is there evidence of client dissatisfaction (telephone calls, letters of complaint)?

What will help?

- Ensure that advisers are aware of where they can seek assistance, either internally, via the CLS Specialist Support Services or from other sources.
- Provide advisers with appropriate training.

“Are advisers making sufficient referral on areas outside their expertise?”

7. In possession cases, has the client been advised of the possession procedure (including, where appropriate, the rent and mortgage possession pre-action protocols and the steps required by the landlord to obtain possession?)

Why does this matter?

Failure to advise the client of the possession procedure means that:

- The client is not provided with comprehensive advice or made fully aware of their rights.
- The adviser’s lack of knowledge may prejudice the subsequent conduct of the case.
- The adviser will not identify defects in the landlord’s case or paperwork, and will not identify any technical defences.
- The adviser will be in a position of weakness when negotiating with a landlord.
- The client may misunderstand the length of time before they face eviction (e.g. they may think they will be immediately evicted after a possession hearing, rather than between 1 and 3 months later after a Warrant has been obtained).
- The adviser will not identify cases where the tenant may be able to get public funding.
- The adviser will not identify the need for a referral.

How can I check this is on my files?

- Is advice on possession procedure confirmed in attendance notes and letters to the client?
- Has the adviser considered and advised the client in writing of the steps required by the landlord before possession can be obtained?

What will help?

- Cover this issue in supervision and file review.
- Provide training on this issue.

“Is advice on possession procedure confirmed in attendance notes and letters to the client?”

8. In possession cases, has the client been advised of the implications of a possession order, both at the outset and when the order has been made?

Why does this matter?

Failure to advise on the implications of a possession order may mean that:

- The client is not aware of any obligations under the terms of a suspended order and the implications if those obligations are not fulfilled.
- The client has not been made aware that if they breach the terms of any suspended order, they can be evicted without further hearing.
- The client is not advised of future action they may be able to take, including, for example, an application to discharge, vary or appeal the order.
- The client is not advised of their re-housing options, if possession cannot be avoided.
- The adviser’s lack of knowledge may have prejudiced the conduct of the case.

How can I check this is on my files?

- Is advice on possession orders confirmed in attendance notes and letters to the client?
- Has the adviser considered the consequences that a possession order may have on the client?

What will help?

- Ensure that advisers have access to a precedent letter that covers this issue.
- Ensure that the file closing procedure picks up whether or not this advice has been given.
- Cover this issue in supervision.

***“Has the adviser considered
the consequences that a possession order
may have on the client?”***

9. In possession cases based upon rent arrears, has the client been asked about the existence of any disrepair at the property and advised of the implications of any disrepair in defending the claim for possession?

Why does this matter?

In possession cases based upon rent arrears, failure to ask the client about the existence of any disrepair at the property or advise the client of the implications of this in defending the claim for possession means that:

- The client is not provided with comprehensive advice or made fully aware of their rights.
- The client is unaware that, in rent possession claims, the existence of an actionable claim for disrepair can afford the client a complete defence to the claim for possession and trigger a set-off of damages against rent arrears.
- The client's ability to resist the claim for possession is prejudiced to such an extent that a failure to ascertain whether there are any disrepair issues may constitute negligence.
- In some cases, a counterclaim for disrepair may be the only option to a client and failure to identify this could lead to the loss of the client's home.
- The adviser's lack of knowledge may prejudice the subsequent conduct of the case.
- The adviser may not pick up cases where public funding could be obtained and/or a referral made.

How can I check this is on my files?

- Has the client been questioned about the existence of disrepair?
- Has the client been advised of the right to raise disrepair as a defence and counterclaim?
- Where the client has raised the issue of disrepair, did the adviser appreciate its importance and was it utilised to benefit the client?
- Has the client obtained any expert's opinion on disrepair (including reports by the Landlord's employees)?
- Is sufficient time spent on dealing with possession cases based on rent arrears?

What will help?

- Ensure that this issue is addressed in supervision and file review.
- Ensure that advisers use instruction checklists (or other tools), which prompt to ask about counterclaims for disrepair.
- Ensure that precedent letters refer to the possibility of a counterclaim for disrepair.
- Ensure that the organisation has adequate, up-to-date materials, sources, and reference books etc that provide information on this issue.

10. Does the adviser have good knowledge of the pre-action protocol in disrepair cases?

Why does this matter?

An adviser's lack of knowledge or awareness of the pre-action protocol in disrepair cases:

- Suggests a lack of knowledge or experience of disrepair litigation, which may prejudice conduct of the case.
- May result in incorrect advice being provided to the client about the merits and conduct of their case.
- May result in a failure to comply with the pre-action protocol. This failure may lead to the client being penalised in costs by the court and/or the landlord refusing to respond.
- May lead to the refusal of applications for public funding.

How can I check this is on my files?

- Has the adviser considered and provided advice on the pre-action protocol?
- Has the adviser complied with the pre-action protocol?
- If the adviser has not complied with the pre-action protocol, have they provided good reasons for this?
- Have standard protocol letters, as set out in the CPR, been used?
- Have applications for public funding been refused due to failure to follow the pre-action protocol?

What will help?

- Ensure that advisers have access to the pre-action protocol and standard letters that they can tailor to the client's case.
- Cover this issue in supervision.
- Provide advisers with training on the pre-action protocol.

***“Has the adviser complied
with the pre-action protocol?”***

11. Where eviction is imminent or a distinct possibility, has the client been advised of the possible consequences of homelessness?

Why does this matter?

The absence of advice on the possible consequences of homelessness means that:

- The client is ignorant of what to do should they face street homelessness.
- In the light of such relevant information their instructions may be different.
- The client may complain against the firm should they be evicted.

How can I check this is on my files?

- Does the letter of advice on completion of any hearing contain a “next steps” section if the client has been unsuccessful?
- Is there a clear attendance note referring to potential homelessness?

What will help?

- Ensure that the firm has a precedent letter covering the possible consequences of homelessness.
- Ensure that file closing procedure picks up on this and, if not, that further advice to re-contact the firm be given if appropriate.
- Cover the issues of homelessness in supervision.

“Is there a clear attendance note referring to potential homelessness?”

12. Has the client been advised of the statutory criteria to be satisfied in order to access housing as homeless from a local authority?

Why does this matter?

Failure to fully advise on the criteria of unintentional homelessness and in priority need may lead to:

- The client failing to use all endeavours to clear rent arrears before eviction.
- A misconceived presumption that the local authority will assist them as homeless.
- Confusion as to their entitlement to further housing support.
- Incorrect advice being given.
- Subsequent refusal of Public Funding (e.g. in a later County Court appeal).

How can I check this is on my file?

- Is there a clear attendance note that deals with each of the criteria (e.g. homelessness, eligibility, priority need and unintentionally homeless)?
- Was the advice on the statutory criteria confirmed in writing?
- Where appropriate, has the client been advised on issues relating to local connection and suitability of offers of accommodation?

What will help?

- Easy access to reference materials. For example:
 - The most recent homelessness Code of Guidance for Local Authorities
 - Housing and homelessness law text books
 - The Housing Law Reports Quarterly Review.

“Was the advice on the statutory criteria confirmed in writing?”

13. Has the client been advised of the relevant procedural stages of a homelessness application from initial application through to County Court appeal of a negative review decision on a point of law?

Why does this matter?

The client must understand the procedural stages of a homelessness application because:

- Otherwise they are likely to make rash decisions (for example, refusing bed and breakfast accommodation), which may prejudice their case.
- They are likely to fail to seek legal advice within the 21-day time limit to request a review of a negative decision and appeal to the County Court.
- They will not understand the lengthy nature of the process.
- They are likely to complain about the length of time spent in temporary accommodation.
- The client may become street homeless by missing a statutory deadline.

All these concerns may lead to a complaint of negligence against the firm.

How can I check this is on my files?

- Does the letter of advice contain a procedural time frame?
- Is there a clear attendance note on procedural stages of the homelessness application?
- Is there clear written advice at each stage (for example, review request/review decision/County Court appeal)?

What will help?

- Ensure advisers have a precedent client letter once a Part VII application to a local authority has been made.
- Ensure advisers have brief precedent letters to local authorities requesting a review of a negative decision (full grounds can follow later).
- Establish practice of local authorities in the area (for example, policy on extending temporary accommodation pending review decision).
- Access to source materials.
- Maintain good relationship with Counsel to provide emergency advice where appropriate.
- Chronology of dates should be noted in the advisers' diary (e.g. computerised diary).

***“Does the letter of advice contain
a procedural time frame?”***

14. Has the single client been advised of the proper legal test and expert evidence required to satisfy the priority need test of vulnerability?

Why does this matter?

- Single clients are most at risk of being made street homeless. If single homeless clients are given incorrect advice, they may be unable to access housing as homeless.
- Where single homeless clients seek assistance, it may be important to gain their trust at first interview or they may not return for further advice.
- Disbursements are wasted on expert evidence that merely recites the nature of the single homeless person's illness.

How can I check this is on my files?

- Does medical evidence address a causal connection between the physical/mental/emotional impairment of the client and its exacerbation by being street homeless?
- Is the definition of vulnerability set out in both attendance note and letter of advice?

What will help?

- Outreach sessions at not-for-profit organisations to gain the clients' trust.
- Willingness to attend the client out of the office.
- Empathetic understanding of client's problems.
- Clear attendance notes are particularly important because the client may not receive or understand letters of advice (e.g. if of no fixed abode).
- Easy access to reference materials.

“Is the definition of vulnerability set out in both attendance note and letter of advice?”

15. Has the client been advised of the definition of intentional homelessness, the steps and evidence required to challenge a decision of intentional homelessness and the relevance of “reasonable to continue to occupy”?

Why does this matter?

- A finding of intentional homelessness may lead to the client being unable to access housing as homeless until they have spent a minimum of 6 months in settled accommodation.
- The definition of intentional homelessness is complex. The client may not be aware of the extent and nature of information required to establish whether or not they fulfil the definition of intentional homelessness and whether their previous accommodation was “reasonable to continue to occupy” (for example, the client was at risk of domestic violence, previous tenancy was subject to disrepair).
- Similarly, the client may not be aware of relevant information regarding the circumstances leading to eviction from a previous tenancy (e.g. maladministration of housing benefit leading to rent arrears).
- Failure to make full and appropriate initial enquiries from a client may lead to a complaint against the firm.

How can I check this is on my file?

- Is there a full attendance note dealing with the above matters?
- Does the letter of advice include the definition of intentional homelessness?
- Is there evidence of rapid action to obtain the housing file including payment of £10 disbursement?
- Is there a clear chronology of the housing file?
- Has public funding been obtained quickly in respect of a County Court appeal?

What will help?

- A pro-forma chronology for the Housing File.
- A good relationship with the local authority so they will send the housing file quickly.
- Swift access to a supervisor.
- Easy access to resource materials.

“Does the letter of advice include the definition of intentional homelessness?”

16. Has the client who fails to meet Part VII criteria as homeless been advised of alternative remedies with regard to community care and children’s legislation?

Why does this matter?

- Alternative remedies are often available to clients who would otherwise face street homelessness.
- It is important to take a holistic view of homelessness.
- Failure to consider alternative solutions indicates a lack of knowledge or experience in homelessness cases. It may lead to a denial of remedies to which the client is entitled and prejudice the final outcome of the case.

How can I check this is on my files?

- Do attendance notes and letters of advice show clear advice on alternative remedies?

What will help?

- Specialist and frequent training in this area.
- Close liaison with social services of the relevant local authority.
- Liaison (where possible) with family and community care departments within the firm.
- Referral list of appropriate agencies and experts.
- If the adviser lacks the necessary expertise in alternative areas, this should be confirmed in writing and a referral made.
- Easy access to reference materials.
- This issue should be covered in supervision.
- Correspondence should be crosschecked with attendance notes to make sure no alternative solutions have been missed.

“It is important to take a holistic view of homelessness.”

17. Where a housing benefit issue is relevant to a client's case, has it been fully and competently resolved (with or without a new matter start)?

Why does this matter?

- Problems with housing benefit can cause debt, distress, loss of a home and a decision that the client has become homeless intentionally.
- A client who is receiving too much benefit is likely to suffer an overpayment decision.
- In rent arrears possession actions by social landlords the Pre-Action Protocol requires them to assist with housing benefits and sometimes inhibits the start of proceedings where housing benefit has been claimed. Careful examination of the housing benefit history and entitlement can prevent possession orders.
- An adviser (whether in writing or in a Court hearing) in a rent arrears case is more likely to succeed if he/she can show the Court how the housing benefits mistake has happened, the regulations and arguments deployed and the prospects of correcting the error.
- Strict time limits in the housing benefit system can mean that delay will cause loss to the client.

How can I check this on my files?

- Are relevant decision letters, requests and receipts for information and other documents in the file?
- Do the documents in the file show that the adviser has considered communications from the housing benefit office critically with an eye to querying gaps and shortfalls in benefit and overpayments?
- Do representations to the housing benefit office make legal arguments or do they simply say, "This is unfair. Please sort it out."?
- If the housing benefit issue has been referred for solution to another person has the fee earner acquainted him/herself sufficiently with the detail to make necessary arguments with landlords and courts?

What will help?

- Train all fee earners in HB regulations.
- Familiarise fee earners with the detail of housing benefit decision letters.
- Have relevant literature including regulations easy to hand.
- Include relevant general advice on housing benefits in standard letters.

18. In re-housing cases, has the advisor consulted a current copy of the allocation scheme of the relevant local authority?

Why does this matter?

The allocation scheme may deviate from the statutory obligations as set out in Part 6 Housing Act 1996 and any decision which is not in accordance with either the published allocation scheme or the legislation is illegal. As a public body with statutory functions (i.e. the allocation of housing) a Local Authority must carry out such inquiries as will enable them to discharge those functions.

Failure to consult a current copy of the scheme may mean:

- The client is wrongly advised in respect of their application for an allocation or transfer
- The client may not be advised of entitlement to challenge an allocations decision by way of internal and judicial review
- The client may not be aware of their right to request a review of an allocation decision
- The client may not be advised of the possibility of applying for a mutual exchange, where applicable
- Advisors leaves themselves open to complaints and possible negligence claims

How can I check this on my files?

- The allocation scheme should be provided free of charge and should be either on the file or clearly referred to on the file
- Written advice to the client should contain advice on the allocation scheme tailored to the client's situation
- Attendance notes should show the client received clear and comprehensive advice

What will help?

- Keeping a record of the allocation schemes of relevant local authorities and updating them regularly to minimise delay in advising
- Checking with other advisors who are likely to know of individual features of allocation schemes
- If a delay occurs whilst waiting for receipt of an allocation scheme, explaining this delay to the client
- Being aware of the possibility of a judicial review challenge to non-compliance with allocations law and schemes
- Keeping a record of review deadlines

“Attendance notes should show the client received clear and comprehensive advice.”

Housing peer review panel members

(as of February 2011)

Rebekah	Carrier
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Please e-mail any comments or suggestions to improvingquality@legalservices.gsi.gov.uk