



Independent
Quality Assessment
of Legal Services

IMPROVING YOUR QUALITY

A guide to common issues identified through Peer Review

Debt

**Third Edition
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Foreword to the First Edition Improving Your Quality

A guide to common issues identified through peer review

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

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

We are pleased to introduce this edition of 'Improving Your Quality - Debt' 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 guides make available common quality issues identified by the Debt Peer Reviewers. Derived from the entire body of peer review reports, analysis has concentrated on those issues frequently contributing towards lower ratings at Peer Review. Each issue is divided into 3 parts:

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

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

Some of the suggestions may also lead to a more general debate concerning standard setting, and the best approaches to dealing with specific quality of advice issues for Debt 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 advisor dealt appropriately with the case at its commencement, by obtaining full information and taking appropriate initial steps?

Why does this matter?

- If the advisor does not obtain full information from the client at the commencement of the case there is a risk the client will not be correctly or fully advised and that the wrong approach is taken with the case.
- A full and correct Financial Statement, and a full list of all of the client's debts, is essential for the advisor to properly assess the client's situation. Only with this information can the client be correctly advised. (If the single issue is liability this information can be dispensed with).
- Without full information there is a risk that the advisor will not identify a need for referral for advice in areas other than debt.
- If the advisor does not consider income maximisation the client may lose out on essential extra income.

How can I check this on my files?

- Is there a satisfactory, up to date, Financial Statement?
- Have full instructions been obtained from the client, including less obvious details such as type of tenancy, nature of any employment?

What will help?

- Use of standard forms to ensure all essential information is obtained.
- Devise a questionnaire for clients to complete prior to their first interview covering all points that may be relevant¹. Be aware that some clients may not be able to complete such a form on their own.
- Full and legible notes of the initial attendance with the client.
- Regular file review and supervision, to ensure that the advisor is made aware of gaps in their knowledge. This will ensure that the particular case reviewed is correctly dealt with, and that the advisor will improve their knowledge to assist clients in the future. This applies not just to the commencement of the file, but to all aspects of the case.

“Is there a satisfactory, up to date, Financial Statement?”

¹ For example, details of all creditors and debts, details of all members of the household, income and expenditure details.

2. Has a Financial Statement been drafted?

Why does this matter?

- It is essential that a Financial Statement, showing the client's income and outgoings, be drafted at an early stage in the case to assist in any negotiations with creditors (an exception to this would be if the only matter in issue is one of liability). A Financial Statement may also help to raise the client's awareness of the limitations of their finances.

How can I check this on my files?

- Is a standard Financial Statement form drafted at the first interview with the client?
- Is the Financial Statement reviewed when the client's circumstances change?

What will help?

- Implement a system that requires the client to complete a Financial Statement on the first attendance with the adviser or as soon as possible thereafter.
- Ensure that clients are told to let the adviser know of any relevant change in circumstances.
- Consider using diary entries as a reminder to update or review Financial Statements at regular intervals.

“Is the Financial Statement reviewed when the client's circumstances change?”

3. Has the client received satisfactory advice at the commencement of the case and have relevant income checks been carried out?

Why does this matter?

- The client should be correctly advised at all times as clearly this is in the best interests of the client.
- Additionally, the advice given at the commencement of the case will often set the course of the case for its entire duration, so if the advice and/or strategy is wrong at the outset this may never be rectified.
- The client may be entitled to income they are not receiving and the income check should identify potential sources of extra income. Additionally, the client may be able to raise a lump sum to reduce the debt amount.

How can I check this on my files?

- Did the advisor identify any issues that the client themselves did not ask for advice about?
- Was the client advised about any need for a referral for advice on matters other than debt?
- Was the client advised about the possible options for dealing with their debt and the advantages and disadvantages of each course of action, or did the advisor make the decision about which approach to take without consulting the client?
- Was the advice tailored to the circumstances of the client, or was it generic debt advice with no reference to the client's particular circumstances?
- Was the client advised about all aspects of their case, such as income maximisation, tax allowances, effect of debt on credit rating?
- Is there evidence of income maximisation sheets?
- Is there evidence of budget forms?
- Is there evidence of the client being informed of this work being carried out?

What will help?

- Use of a checklist at the first attendance, to prompt the advisor to cover all relevant topics.
- Adequate training for the advisor on debt law and advice.
- Knowledge of at least basic welfare benefit matters is essential to good debt advice, so ensure an adequate level of knowledge. Consider obtaining the two Welfare Benefit Handbooks (CPAG).
- Set procedures to carry out income maximisation checks.

“Is there evidence of income maximisation sheets?”

4. Has the client received clear and comprehensive written confirmation of the facts of their case and the advice they were given?

Why does this matter?

- The client has a record of the advice they were given.
- The client has the opportunity to check that the advisor has the correct information about them.
- There is a clear record on the file of the client's instructions and the advice given. This is a useful tool for the management of the case. It also provides some protection for the advisor against any later complaint by the client (assuming the advice was correct).

How can I check this on my files?

- Is there a copy of a letter to the client confirming instructions, advice and next steps? Was this letter sent promptly after the first attendance?
- Was the letter written using language the client could understand, rather than jargon or technical terms?
- Is there evidence on the file that the client did not understand the advice given, for example, contact from the client for further information, or notes of a discussion with the client revealing a misunderstanding?

What will help?

- Ensure an appropriate letter is sent promptly after the first attendance.
- Ensure that any standard letters are tailored to the client's particular circumstances.
- Remove irrelevant information from standard letters.
- If fact sheets are used to provide standard information, ensure they are up to date, relevant, clear and not too lengthy.
- Ensure any difficult terms that must be used are explained. For example, if a case has been 'adjourned generally with liberty to restore' explain what that means.

“Is there a copy of a letter to the client confirming instructions, advice and next steps?”

5. Have priority and non-priority debts been identified?

Why does this matter?

- The difference between priority and non-priority debts is significant with regard to the sanctions available to creditors. The difference will determine the appropriate strategy for dealing with the case and impact upon negotiations with creditors.

How can I check this on my files?

- Does correspondence to clients highlight the importance of the debt and the sanctions available?
- Have priority and non-priority debts been separated on the Financial Statement or elsewhere on the file?
- Has the correct strategy been adopted for dealing with the different debts?

What will help?

- An appropriate Financial Statement or form in the file that separates priority and non-priority debts.

“Has the correct strategy been adopted for dealing with the different debts?”

6. Has the client been correctly advised with regard to their priority debts and is the advisor correctly dealing with these debts?

Why does this matter?

- The consequences of not paying a priority debt can be very serious.
- If the client is left to deal with their priority debts themselves there is a risk these debts won't be paid, or that the client will make a payment arrangement that is unaffordable.
- If the client is not fully advised about the consequences of not paying their priority debts they may not pay those debts, leading to serious adverse consequences.

How can I check this on my files?

- Is there a full list of all priority debts and has a copy been sent to the client for checking?
- Does the Financial Statement make adequate provision for ongoing priority expenditure, in addition to payment toward the existing priority debts?
- Has the client been advised about which of their debts are priority and the consequences for them of not paying those debts, or has the client simply been provided with standard advice on priority debts with no advice specific to them?
- Has this advice been confirmed in writing?
- Has the advisor contacted the priority creditors directly or have they simply advised the client, who has then had to sort the matter out themselves?

What will help?

- Ensure that the client is given advice tailored to their circumstances, and that the advice is confirmed in writing.
- Be cautious in the use of standard letters. If they are used, edit them as appropriate to ensure the content is relevant to the client.
- Provide the client with a copy of their creditor list and Financial Statement and obtain their approval upon the contents.
- Consider in each case whether it is in the client's interests for you to deal with the matter, or whether it is appropriate to advise the client how to deal with the matter themselves.
- Be aware of what constitutes a priority debt and have detailed knowledge of enforcement action for priority debt.
- Be familiar with the particular practices of priority creditors relevant to your client group, for example, the council tax collection policy for your local authority or authorities and have access to their arrears collection policies.
- Be aware of any trust funds of the utility companies relevant to your client group.
- Ensure that the client has an appropriate method of payment for each debt, for example, Giro slips, direct debit, payment card.

7. Has the client been correctly advised with regard to their non-priority debt and is the advisor correctly dealing with these debts?

Why does this matter?

- If the client is not correctly advised about their non-priority debts they may pay those debts instead of their priority debts, or they may make payments they cannot afford in the mistaken belief they must do so.
- Unaffordable payment arrangements will cause financial hardship and there is a higher risk the payment arrangement will break down.
- If the client is not advised in detail about their particular circumstances they may give a non-priority debt less importance than necessary. For example a County Court judgement may not be too serious for someone with no job, assets or home, but could be very serious for a home owner at risk of an Order for Sale, or for someone whose job requires a good credit rating.
- If the advisor has not ensured that there is a suitable method for the client to make payments, there is a risk those payments won't be made.
- If the advisor has not confirmed that interest and other charges are not being added to the debt, the client's position could be getting worse each month, rather than improving.
- If the client can only afford token payments now and the advisor has not advised of the long term implications of such an arrangement, the client will not be aware that they may never be debt free.

How can I check this on my files?

- Is there a full list of all non-priority debts and payment offers, and has a copy been sent to the client for their approval?
- Has the client been advised about which of their debts are non-priority and the consequences for them of not paying those debts, or has the client simply been provided with standard advice on non-priority debt with no advice specific to them?
- Has this advice been confirmed in writing?
- Does the file indicate the client is making the payments as offered, or is there evidence that payments are not being made, for example, contact from creditors about missed payments?

What will help?

- Ensure that the client is given advice tailored to their circumstances, and that that advice is confirmed in writing. If the current arrangement does not offer a long term solution, ensure the client is advised appropriately on that point.
- Be cautious in the use of standard letters. If they are used edit them carefully to ensure the content is relevant to the client.
- Provide the client with a copy of their creditor list, payment offers and Financial Statement and obtain their approval upon the contents.
- Ensure that the client has an appropriate method of payment for each debt, for example, Giro slips, direct debit, payment card.

8. Has the client been advised about their liability for their debt and the consequences of challenging a debt on liability?

Why does this matter?

- A client may pay towards a debt for which they are no longer liable.
- The client may not realise they are not liable for a particular debt. It is the duty of the advisor to consider liability for each debt, on behalf of the client.
- The client may wish to challenge liability but may not appreciate that there can sometimes be adverse consequences for doing soⁱⁱ.
- The client may not wish to challenge liability, even if they can do so.
- The choice of whether or not to challenge a debt on liability is one for the client to make, but they can only do so if they are fully advised.

How can I check this on my files?

- Has the advisor considered liability for the client's debts, especially in cases where there is a greater likelihood that the client may not be liableⁱⁱⁱ?
- Where there is a possible challenge on liability, has the client been advised about the fact they may not be liable and the consequences for that client of challenging liability for that debt?
- Has this advice been confirmed to the client in writing?
- Has the advisor challenged liability when it was appropriate to do so and did the advisor achieve the correct outcome in that case?

What will help?

- Be aware of a possible challenge to liability in every case, but take a sensible, pragmatic approach^{iv}.
- Stay up to date with case law and statute on debt and related civil law matters. There are several sources of useful case law updates, such as Quarterly Account and Advisor.

ii For example, lack of future access to catalogue purchases, or effect on credit rating.

iii For example, clients under 18 years old, catalogue and other Consumer Credit Act debts, old debts where the Limitation Act may apply.

iv For example, if the client says they owe the money and the circumstances are such that they appear to owe the money, then there may be no need to check liability. Consider each case and each debt on its own merits.

9. Is the advisor aware of civil court rules and procedures relevant to debt matters?

Why does this matter?

- The client may be wrongly advised about the options open to them if the advisor is not fully aware of relevant court matters.
- An advisor who is not knowledgeable about relevant court matters is unable fully and correctly to advise a client on debt matters.
- The client may decide to follow an incorrect or detrimental course of action if they have not been correctly advised. This could result in adverse consequences^v.

How can I check this on my files?

- Does the advisor appear to be aware of the court procedures relating to debt^{vi}.
- Has the client been fully advised about all court matters relating to their case? Is this advice correct and has this advice been confirmed in writing?
- Do court forms completed by the advisor show merely a transcription of the client's instructions, or do they show an application of correct legal principles by the advisor?
- Has there been an outcome to a court matter that appears to indicate a lack of knowledge on the part of the advisor^{vii}.

What will help?

- Have access to the Civil Procedure Rules, such as the Green Book, and also to a basic textbook on Civil Procedure.
- Every advisor should follow at least one case all the way through the court process, up to and including the final hearing to allow familiarisation with court procedure.
- Consult more experienced advisors, either internally or externally. Use the specialist support lines.

V For example, an increase in the amount owed by defending a claim when the money is clearly owed. Allocation of a matter to the Fast Track, when it could be dealt with as a Small Claim, with adverse costs consequences. Missing the time limit, and so the opportunity, to make an application to Set Aside Judgment.

Vi For example, Setting Aside Judgment, Redetermination, Variation, Postponement of Possession Orders, Suspension of Eviction Warrants, Acknowledgement of Service, Admissions, Part Admissions and Defences.

Vii For example, has an outright order been made in circumstances in which an instalment order would be expected.

10. Has the advisor conducted the case in a satisfactory manner and used reasonable skill and diligence?

Why does this matter?

- Prejudice may be caused to the client if a case is not conducted properly.
- The client may complain about the firm and/or the reputation of the firm may be adversely affected because of the manner in which the advisor conducted the case, even with a satisfactory outcome.
- A lack of reasonable skill, care and diligence may result in inadequate advice and assistance being given to the client, which may adversely affect the outcome of the case.

How can I check this on my files?

- Has the advisor dealt promptly and appropriately with contact from the client and from third parties, or is there evidence of delay on the part of the advisor?
- Has the advisor been proactive in dealing with the case or, for example, has the advisor only done something after contact from the client or someone else?
- Is there evidence of client dissatisfaction on the file?
- Is the client told promptly about developments in the case, and is the client advised about the implications of those developments or simply notified of them?
- Has the client been told to notify the advisor promptly of any change in their circumstances, and has the advisor taken the appropriate action, such as to update the Financial Statement?
- Have the client's instructions been implemented?
- Has the adviser responded promptly to contact from other parties and chased other parties when necessary?
- Has the adviser correctly identified and pursued issues not necessarily raised by the client (for example, the validity of a Consumer Credit agreement)?
- Is the advice given by the adviser legally correct?
- Is the adviser keeping up to date in their area of practice?

What will help?

- Operate a diary system so that the case is progressed proactively and not left to drift.
- Respond promptly to contact from others.
- Ensure the client is notified of, and advised upon, all developments in the case.
- Ensure all important advice or information is confirmed in writing to the client and, where necessary, to third parties.
- Include in the initial advice letter a request that the client notifies you promptly of any change in their circumstances.
- Ensure that advisers take comprehensive instructions early on in the proceedings.

- Provide a list of steps necessary to further the case and ensure that the client and the adviser review it regularly. A copy of this list should be enclosed in the initial advice letter and updated to the client when it is reviewed.

11. Are the files well organised, in chronological order and legible?

Why does this matter?

- Files that are disorganised and contain illegible handwriting are difficult to refer back to and would not pass the “pick up test”.
- Debt cases in particular can be very complicated with many different creditors involved. Without good case management some matters could be missed and left unresolved, or the client could be subject to unnecessary enforcement action or other sanction.
- A client could have cause for complaint against the advisor, even if the outcome is satisfactory.

How can I check this on my files?

- Are the files organised and in chronological order?
- Are pro-forma and handwritten file notes legible to others?
- Are notes that are illegible transcribed?
- Is the continuity of the case between advisers unaffected by the order or legibility of the file?
- If someone other than the relevant advisor has to work on the case, is it easy for that person to ascertain all relevant information, such as the stage each debt is at, any key dates, any outstanding matters etc?
- Is the file in good order, is correspondence filed chronologically, are documents relating to different debts filed in a clear and accessible manner, is there evidence of missing documents?
- Have key dates been missed?
- Are there copies of relevant documents on the file?

What will help?

- Set up a proper and effective file review system.
- Date each item of attendance, preparation and correspondence and ensure that it is filed chronologically.
- Consider typing up any handwritten notes in appropriate cases; double up this process by including the notes in advice letters to clients.
- Set up an efficient filing system.
- Conduct each case on the basis that someone else may have to work on it tomorrow. This is especially important in debt cases where there will frequently be multiple debts and creditors, and many copies of very similar letters being sent out and received.
- Put in place a system for ensuring that the status of each individual debt can be quickly identified by someone not familiar with the file.

“Are the files organised and in chronological order?”

12. Has the advisor closed the file at the appropriate time and in the appropriate manner?

Why does this matter?

- If a file is closed too soon, without all of the outstanding matters being resolved, then the client is likely to be subject to continued and repeated demands for payment from creditors.
- If the file is not closed soon enough then the advisor is at risk of getting caught in a cycle of adjusting Financial Statements and payment proposals.
- Frequently in debt cases, the matter is rarely finally resolved at the time the case closes. There is often outstanding debt, albeit being paid by way of a payment arrangement. The client needs to be advised how to deal with requests from creditors for review of the arrangement once the case has closed and they are dealing with the matter themselves.

How can I check this on my files?

- Has the client been sent a detailed closing letter?
- Is there an affordable payment arrangement in place for each debt at the time the file closes, or the client advised in respect of any debt for which there is no arrangement in place?
- Has the client been advised about what to do if contacted again in future by their creditors?

What will help?

- Ensure each client is sent a detailed closing letter setting out details of each debt at the time of closure of the file, including the amount currently outstanding, the current rate of payment, the date that arrangement is due for review by the creditor, the current stage of any enforcement action, and any other relevant matter.
- Advise the client of any steps they may have to take in the future, including any relevant time limits.
- Provide the client with a draft standard letter to creditors to use should they have to make a new or revised payment proposal in the future. Provide a copy of their most recent Financial Statement and a blank Financial Statement, with advice on their use.

“Has the client been sent a detailed closing letter?”

Debt Peer Review Panel Members

(as of August 2010)

David Dickinson - Guide's editor

Michael Moreton

Lynda Reid