



Independent
Quality Assessment
of Legal Services

IMPROVING YOUR QUALITY

A guide to common issues identified through Peer Review

Family

**Third Edition
October 2010**

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 '*Improving Your Quality – Family*', 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 Family 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 4 parts:

- An outline of the advice and/ or action that Peer Reviewers would normally expect.
- 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 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 for Family 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

April 2007

Foreword to the Second Edition

Although the First Edition of this Guide was published quite recently, in July 2007, the issues identified as significant were drawn from reports written during 2006. In preparing this Second Edition a substantial number of more recent reports have been analysed to see whether the issues identified as significant have changed over time. In fact, there has been remarkably little change in the issues identified in Peer Review reports. Perhaps this should be no surprise and shows that the essential elements of a well run family case do not change over time. For that reason, although there have been some small amendments to this Guide to reflect changes in the law and the fee schemes under which Legal Aid family work is now carried out, there are no changes to the issues that were set out in the First Edition. What have changed are the quotes illustrating the different issues. All of these quotes are taken from reports written this year (2008), showing that the issues identified in this Guide are those that continue to come up on a regular basis in Peer Review reports.

One benefit of the analysis of Peer Review reports that has been carried out is that it is now possible to give an indication not only of common issues, but of those issues which recur more frequently than others. The lists below may not be a definitive guide to the most common issues, but they do give a clear indication of those issues that come up in the reports written about providers throughout the country and of varying size and specialisation. The individual experience of Peer Reviewers confirms the prevalence of these issues, which may therefore provide a useful aide memoire for any provider reviewing its work or preparing for Peer Review:

The most common positive findings

1. Good communication with clients – clear advice letters, promptly sent and written in appropriate language.
2. Prompt work, including emergency action where needed.
3. Evidence of proactive work and case strategies.
4. A full record of the instructions and advice in attendance notes, including notes of hearings.
5. Outcomes that were good or the best that could be achieved.

The most common concerns

1. A lack of merits advice.
2. No evidence of advice about the relevant law.
3. Delay, both at the start of the case and then during the case.
4. An inadequate record of the instructions received, both on the file and in writing for the client.
5. A lack of written advice about the outcome of hearings and the meaning and effect of any Order made.

The most common suggested areas for improvement

- Using standard letters or leaflets to provide advice about particular aspects of law and procedure.
- Providing tailored advice in addition to standard letters or leaflets, and using standard letters or leaflets appropriately by making sure that only relevant standard advice is given.
- Training about various issues, most commonly the legal aid system.
- Ensuring that file review works effectively both for supervision and to avoid delay.
- Making sure that all advice is recorded, on the file and in writing for the client.

When the First Edition of this Guide was prepared the Family Peer Review Panel was concerned to make clear that the issues identified as significant were based on work carried out under the funding arrangements in place prior to April 2007. The situation remains that the great majority of the work reviewed by Peer Reviewers has been carried out under those funding arrangements, because most cases started under the fee schemes introduced in October 2007 will not have been finalised to be included in a peer review sample. As with all members of the profession the Family Peer Review Panel is concerned to see what effect the limited introduction of fixed fees has had and will review and comment on any changes to practice or quality that are apparent.

Finally, everything that was said in the Foreword to the First Edition remains valid. This Guide is not intended to be prescriptive. The aim is to make the findings of Peer Review readily available and to stimulate discussion about standards in Family work.

Family Peer Review Panel

May 2008

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General Issues

1. Are clients provided with a clear record of the instructions they provide, the advice they receive and the agreed action?

What are Peer Reviewers looking for?

- An initial letter that records in a structured way and with reasonable detail the instructions received from the client, the advice that was given (in relation to law, procedure and merits) and the action agreed to be taken by both the client and the firm. It is a matter for the firm as to whether this is all recorded in one letter, in two or more letters, in a combination of letter(s) and guidance leaflet(s), or in a combination of a typed attendance notes, letter(s) and guidance leaflet(s), provided that there are details of the instructions provided, advice given and agreed action.
- As the matter progresses, letters that provide a clear record (for both the client and any advisor who takes over the case) of the client's instructions, the advice given and the agreed action.

Why does this matter?

- Without a record of the instructions, there is no opportunity for the client to check that their instructions have been fully and accurately recorded. Any errors or omissions may not be identified until a later and more critical stage.
- Clearly recorded advice is of benefit both for the client and the provider. For the client, the record should reinforce the oral advice that has been given. For the provider it should provide a record if there is change of advisor or if the advice is queried.
- There is less risk of delay if the action that both the client and the provider are to take is set out in writing.

How can I check this on my files?

- Read the initial correspondence with the client and see whether it is possible to understand the instructions, advice and action agreed for all the issues in the case from this document alone.
- Compare the attendance note of initial instructions, advice and action taken with the initial correspondence sent to the client, to see whether the correspondence provided an accurate record.

- Check key stages in the case and see whether the client's instructions are recorded at that point, whether the advice given is recorded, and whether the subsequent action agreed is recorded (for example, about a financial settlement proposal or on receipt of the CAFCASS report).

What will help?

- Consider using standard letters that provide a prompt for the recording of instructions, advice and action.
- Make sure that the recording on the file and to the client of initial instructions, advice and action agreed are specifically dealt with in internal file reviews.

“The outset of case letter did not provide an adequate record of the client’s instructions, the advice provided, and the action agreed.

See for example the file of B and correspondence of 03.04.06 where the instructions, advice and action agreed were set out in a half page...

Also the file of W. In the outset of case letter (06.12.06) the recorded advice dealt only with funding and there was no record of the agreed action.”

2. Are sufficient instructions taken and recorded?

What are Peer Reviewers looking for?

- Sufficient instructions taken from the client to enable full advice to be given about both the presenting issue and related issues. For example, if the client says that they only want a divorce, sufficient instructions should be taken about financial issues to ensure that advice can be given to protect the client's position.
- If urgent initial work is required, fuller instructions should be taken at a later stage.
- As the matter progresses, evidence that instructions are taken and recorded at key stages.

Why does this matter?

- An advisor who is aware of only part of the background may, as a result, give incorrect merits advice, action taken may be ineffective and relevant linked issues may not be dealt with.
- If there is no record of instructions regarding a particular issue, the assumption will be that the issue was not considered.

How can I check this on my files?

- Use internal file review to see whether sufficient instructions have been taken initially and during the case.
- Check whether issues come up during a case that should have been identified at an earlier stage.

What will help?

- A client instruction sheet/questionnaire that prompts enquiries about potentially relevant issues.

“The fee earners did not record enough details about the case either on the initial instructions pro forma or on the typed summary sent to the client.

On the file of C for example the instructions did not record that the mother had given birth to another child and as a result the local authority in another area had issued proceedings with a family member applying for a Special Guardianship Order in respect of an older half sibling.

There was no background recorded about the previous proceedings or that the children had serious health needs such as cerebral palsy and asthma.”

3. Are all linked issues dealt with appropriately?

What are Peer Reviewers looking for?

- A holistic approach to the client's situation.
- Advice to the client about related issues, even if these were not the presenting problem.
- Information about other sources of advice, where the client needs advice which the firm cannot provide.

Why does this matter?

- The client may not understand what are the important issues in their case.
- The client may not understand the importance of linked issues unless they are given advice about those issues.
- The client cannot make informed decisions about the presenting problem unless they are aware of the impact their decision will have on other issues.

How can I check this on my files?

- See whether comprehensive instructions have been taken at an early stage.
- Check whether the advice recorded for the client covers all issues or just the presenting issue.
- As the file progresses, see whether there is evidence of linked issues arising and advice being given.
- Look for evidence of clients being referred to other agencies regarding specific issues, for example welfare benefits or homelessness.

What will help?

- Standard information/advice sheets targeted at common linked issues, for example financial issues on divorce, or the significance of domestic abuse in Children Act cases.
- Information for all advisors regarding local agencies which may provide advice and the arrangements for referral.
- Training for advisors outside their area of specialism to improve awareness of relevant linked issues.
- Internal file reviews that consider the substance and breadth of the advice provided.

“On F, there was excellent tailored and comprehensive advice on all aspects of the client’s case.

The presenting issue was a property dispute following the recent breakdown of the relationship.

Advice was also given about the linked issue of parental responsibility; what it meant and how it could be acquired.”

4. Is the possibility of mediation considered (either at all or at an early stage), and are clients advised of the potential benefits?

What are Peer Reviewers looking for?

- Advice to the client about what mediation is and how it works.
- Advice about the potential benefits of mediation – that mediation may be quicker and cheaper, that it is non-adversarial and so may reduce antagonism between the parties, that it offers the client the chance of retaining more control over decisions about the future, and that it offers a way of avoiding Court proceedings.
- Advice about mediation that is appropriate for each client. For example, where there are concerns about domestic abuse the advice given should show an awareness of this.

Why does this matter?

- The client should know the alternatives to Court proceedings to be able to make informed decisions about what is the right course of action for them.
- The client is entitled to make a decision about whether or not a mediation referral should be made. Even where it appears that mediation is unlikely to be appropriate or successful, information should still be provided so that the client has the information necessary to make a decision.
- Mediation can be a positive way to try to resolve disputes.

How can I check this on my files?

- See if information about mediation was given at an early stage of the case.
- If initial negotiations did not resolve the client's difficulties, check whether the option of mediation was fully explained as a possible next step.
- If there is correspondence from the other party suggesting mediation as an option, check that advice was given and that the other party was given a specific response.
- When an application for a certificate is contemplated, see whether the client was told about the need to be referred to mediation in a full and positive way.

What will help?

- Make sure that all advisors have up to date information and referral forms for local mediation services.
- Provide clients with information leaflets (for example, the Resolution leaflet “Helping couples to reach agreement”) and leaflets from local mediation services.
- Have a standard letter or leaflet available for advisors to use as the basis of their advice about mediation.

“All of the files can be commended on the active consideration of mediation as a means of resolving the dispute and it being realistically discounted where it would be inappropriate..”

“The supplier routinely made mediation referrals but without giving the client much, if any, information about the process and how it may assist them (costs benefits, potentially a quicker process, better able to manage and plan their own affairs).”

5. Are clients advised appropriately about the relevant law that applies to their case?

What are Peer Reviewers looking for?

- Advice about the law that applies to the client's case, whether or not there are proceedings.
- Advice that is tailored to the individual client and the extent to which the case progresses. Much fuller advice will be needed when proceedings are issued than for initial or one-off advice.

Why does this matter?

- A client who does not have some information about the relevant law will find it difficult to understand advice that is given about merits.
- A client, who is aware of the law that applies to their case, is more likely to understand what evidence will be relevant and what will not.
- Reference to the relevant law can help a provider to focus on the issues that are important in the case.

How can I check this on my files?

- Read the initial letter to the client and see what information it contains about the relevant law.
- If information is not in the initial letter, see what advice about the law is given as the case progresses.
- Check for key stages in the case and see whether advice about the relevant law has been given by that point, for example when application is made for Decree Absolute or when any application is made to the Court.

What will help?

- Up-to-date and well drafted standard leaflets, letters or paragraphs. These could cover:

Divorce - the ground for divorce and the five facts.

Ancillary Relief - the Court's duties in relation to fairness and equality; the section 25 factors; the options in relation to pensions.

Cohabitee Finances - the difference in the legal situation for married and unmarried couples; the law applying to claims by cohabitees, including resulting and constructive trusts; the provisions of sections 14 and 15 of the Trusts of Land and Appointment of Trustees Act 1996; the provisions of Schedule 1 of the Children Act 1989.

Domestic Abuse – the remedies available under the Family Law Act 1996 and Protection from Harassment Act 1997; the meaning and effect of non-molestation and occupation orders; criminal court proceedings.

Private Law Children Act Proceedings – that the child’s welfare is the paramount consideration and the welfare checklist; that the Court will consider whether there is a need for an order and the importance of avoiding delay; the meaning and effect of section 8 orders; the meaning and effect of Parental Responsibility.

Public law Children Act proceedings - the threshold criteria; the meaning and effect of an Emergency Protection Order; the meaning and effect of interim and full Care and Supervision Orders and Family Assistance Orders; the meaning and effect of a Placement Order and an Adoption Order.

There is nothing wrong with standard advice regarding the legal framework provided that it is up to date. However what is also needed is tailored advice to apply the law to the circumstances of the individual client.

- Make sure that this issue is specifically dealt with in internal file reviews.
- Consider whether leaflets prepared by the Law Society, Resolution, Advice Services Alliance, Community Legal Service and HM Courts Service may assist.

“On Children matters the files had good initial letters providing information on matters such as Parental Responsibility, the Welfare Checklist and defined contact.”

6. Are clients advised of the relevant procedures?

What are Peer Reviewers looking for?

- Advice about the procedure that applies to the client's case, particularly when there are Court proceedings.
- Advice that is tailored to the individual client and the extent to which the case progresses. Initial advice may be required regarding the overall structure and fuller advice regarding each stage as the case progresses

Why does this matter?

- The client is more likely to have realistic expectations about the timescale if they understand the stages through which the case may progress.
- The client who is aware of the procedure that applies to their case, will understand better what is required of them and when.

How can I check this on my files?

- Read the initial letter to the client and see what information it contains about the relevant procedure.
- If information is not in the initial letter, see what advice about the procedure is given as the case progresses.
- Check for key stages in the case and see whether advice is given about the relevant procedure at that point, for example on the issue of proceedings.

What will help?

- Up-to-date and well drafted standard leaflets, letters or paragraphs. These could cover:

Divorce - overall procedure and timescale; issues regarding service; the application for Special Procedure directions; the application for Decree Absolute.

Ancillary Relief - the overall procedure and timescale for ancillary relief claims; the matters to be dealt with at the First Appointment; the nature of the Financial Dispute Resolution appointment.

Cohabitee Finances - the procedure and timescale in relation to claims under section 14 of the Trusts of Land and Appointment of Trustees Act 1996; the

procedure and timescale in relation to claims under the Children Act 1989 Schedule 1; the Court's approach where both section 14 and Schedule 1 claims are issued.

Domestic Abuse - the availability of ex-parte orders and the criteria for obtaining these; the requirement of personal service on the Respondent; the need for an on notice hearing; the need for service of notice of a non – molestation order or a Power of Arrest on the police; what to do in the event of a breach.

Private Law Children Act Proceedings - the procedure at the first directions hearing; the involvement of the CAFCASS Officer and what will be expected of the client; the stage at which statements of evidence are likely to be ordered and the procedure for a contested hearing; the relevance of domestic abuse.

Public Law Children Act Proceedings – the overall procedure and timescales as set out in the Public Law Outline including, where appropriate, reasons for departing from it; the key stages of the Case Management Conference and Issues Resolution Hearing the role of the Guardian; and the nature and effect of all interim and final orders at appropriate stages throughout the case.

There is nothing wrong with standard advice regarding the relevant procedure provided that it is kept up to date. However what is also needed is tailored advice to relate the procedure to the circumstances of the individual client.

- Make sure that this issue is specifically dealt with in internal file reviews.
- Consider whether leaflets prepared by the Law Society, Resolution, Advice Services Alliance, Community Legal Service and HM Courts Service may assist.

“See further, the correspondence of 09.11.06 in which the client was informed that the petition has been forwarded to the Court.

There was no written advice about the next steps; the client would need to have recalled the verbal advice of June 06 to know what the next steps were.”

7. Are clients advised of the merits of their case?

What are Peer Reviewers looking for?

- Advice to the client about the merits of the case they wish to pursue, from the outset of the case. Where the provider does not have sufficient information to advise, this should be made clear to the client and merits advice provided when this is available.
- Clear merits advice when settlement proposals are made, confirmed in writing to the client.
- Advice about the merits of any particular course of action that is proposed and the merits and availability of any other appropriate course of action.

Why does this matter?

- The client relies upon the provider to give a professional opinion regarding the merits of different courses of action. If this is not done, then the client receives limited benefit from legal advice and does not have the necessary information to know how to proceed.
- A client who receives clear merits advice is much less likely to pursue a course of action that is unreasonable or unlikely to be successful.
- The provider needs to have in mind the sufficient benefit test (Legal Help) or costs benefit (Family Help (Lower) and Certificated work) to comply with its obligations to the Legal Services Commission.

How can I check this on my files?

- Read the initial letter to the client and see whether any initial merits advice is given or any explanation as to what is needed before merits advice can be given. If information is not in the initial letter, see what advice about merits is given as the case progresses.
- Check for key stages in the case and see whether advice is given at that point, for example on receipt of a settlement proposal.
- Look at the outcome of the case and see whether the advice given to the client was consistent with the outcome.

What will help?

- Effective systems of supervision, which ensure that the advice that is given at key stages is complete and accurate.
- A system for file allocation which ensures that advisors deal with cases within their competence and experience.

“The client instructed the firm to defend the injunction proceedings in the matter of J. This was done thoroughly.

However no advice was recorded on the file as to the chances of success in view of the serious nature of the allegations against him or as to the possibility of settling the matter by cross-undertakings at an early stage in the case.”

“There was little advice to the client. The firm stated that they would know which advice option to take, i.e. defend or otherwise, when they knew the allegations.

The police statements clearly stated that the client was in the back garden, which put him in breach. At this point the supplier had sufficient information to advise.

Had counsel not been involved it was difficult to ascertain at what point the client would have been advised as to the strength of the evidence against him and the likely penalty.”

8. Are clients advised regarding the terms and effect of orders made in any proceedings?

What are Peer Reviewers looking for?

- A copy of each order is sent to the client.
- An explanation for the client (whether or not the client was at the hearing) of the terms and effect of the order and the action that will be required as a result.

Why does this matter?

- The client should have information throughout the case, and at its conclusion, about the orders that the court has made, to understand the following:
 - The progress of the case
 - The timescales for the case
 - What action the Court expects the client to take.
 - What action the Court expects the solicitor to take.
 - The legal effect of orders made against them so that the client knows what they can and cannot do and the consequences of not complying with the order.
 - The legal effect of orders made in their favour so that the client knows what their rights and obligations are under that order and what action they can take if the order is not complied with.

How can I check this on my files?

- Check the date of each Court hearing and then the file to see if the client has been written to with details of the order made by the Court and sent a copy of the order.
- See if there is clear advice given to the client about any obligations that the Court has imposed on them.
- Check that the legal effect of each of the orders made by the Court has been explained in writing to the client.

What will help?

- A specific question on internal review forms in relation to informing clients of court orders.
- A diary system to remind advisors following a court hearing to check that the court order has been received
- A letter to the client immediately after a hearing to summarise the outcome and then a letter with the typed copy of the Order when this is received.

“The final (contact) order when received from the court was sent to the client (letter 03.04.2007) with advice that this now brought an end to the proceedings and no further advice was given.

The correspondence following a hearing did not routinely explain the terms of the order made. See, for example, the file of F (letter of 11.12.06) where one paragraph was explained but the significance of the others was not..”

9. Are cases progressed without delay?

What are Peer Reviewers looking for?

- Cases progressed without unreasonable delay.
- No evidence of delay that prejudices the client.
- Evidence that files are regularly reviewed.

Why does this matter?

- Delay may unnecessarily prolong the client's case and increase the strain put on the client by negotiations and/or proceedings.
- The costs may be increased if the case takes longer and the client is chasing for progress.
- The client's perception of the quality of advice may be affected by delays in the case.
- The outcome achieved for the client may be prejudiced by delay.

How can I check this on my files?

- Look for any significant and unexplained periods of delay on files.
- See whether delay is a consistent feature of the work carried out. Check, for example, how long it takes for the client to be advised regarding letters received from the other party.
- Check whether files are dealt with promptly on conclusion.

What will help?

- Office procedures that ensure that inactive files are brought to the attention of advisors.
- A “bring forward” diary system to ensure that if a response is not received, further action is taken.
- Effective file allocation so that advisors can cope with the cases for which they are responsible.

“There were occasions where files were not progressed quickly and there were concerns in these circumstances that files were allowed to “drift”.

*The file of **H** was an example of this... it was not until February 2004 that the supplier wrote to the other side confirming the instructions given in November to agree a consent order.”*

10. Is the advice given tailored to the circumstances of the individual client's case?

What are Peer Reviewers looking for?

- Advice given about the relevant law, procedure and merits is tailored to the individual client (taking into account the client's likely understanding and any learning or language difficulties) and the circumstances of their case.

Why does this matter?

- The client should not be expected to know how standard information relates to them. For example, the client will not be able to perform the balancing exercise required when considering section 25 or the welfare checklist.
- The client is more likely to understand information in the context of their own case, to then make an informed decision about the options that are available.
- Irrelevant standard information is unhelpful and confusing for the client.

How can I check this on my files?

- See whether the initial correspondence only contains advice relevant to the client's particular circumstances.
- As the case progresses, check whether advice is given about issues as they arise.

What will help?

- Training for advisors so that they are confident giving tailored advice.
- File allocation that ensures that advisors deal with cases that they are sufficiently experienced to advise upon.
- Internal file reviews that consider whether the advice that has been given is relevant for the individual client.

“First attendance notes, which were generally sent to the client, were structured to give general non-tailored information followed by short advice paragraphs. The advice was often too brief or totally lacking.”

11. Are clients advised regarding correspondence and documents received?

What are Peer Reviewers looking for?

- Copies of all relevant correspondence and documents sent to the client, unless there are clear reasons not to.
- Some advice about the correspondence and documents that are sent.

Why does this matter?

- The client should be aware of developments in the case and what is being said by the other party and third parties.
- When correspondence and documents are sent to the client, the client needs some advice about the relevance and significance of these. If the client is asked to make an appointment to discuss documents then only outline advice need be given.
- Without some advice, the client may be caused unnecessary anxiety and stress if they misunderstand what is being said in correspondence or documents.

How can I check this on my files?

- See if the client is routinely sent correspondence and documents received.
- Look for key documents being sent and the advice at that stage, for example an expert's report or settlement proposal.

“There was a tendency to send reports/correspondence out to clients and simply invite them to contact the fee earner to provide their instructions.

The opportunity should be taken by the fee earner to venture an initial opinion or give some preliminary advice to the client on receiving significant information”.

What will help?

- Internal file reviews that focus on this issue.
- Training to ensure that it is the policy of all advisors to provide copy correspondence and documents to the client.

“Important documents were sent to the client with advice.

*For example, on **B**, psychiatric reports were sent to the client with a letter explaining the recommendation (letter dated 12.04.2006), there was a summary explanation of the results of the TrichoTech analysis sample (letter dated 20.04.2006), the final statement of the social worker was sent to the client (on the 02.08.2006) and advice was given about the recommendation....”*

12. Are vulnerable clients dealt with appropriately?

What are Peer Reviewers looking for?

- Correspondence, communication, advice and overall conduct of all cases that is tailored to the client's need and ability. This is particularly so where the client has a disability and requires a reasonable adjustment to how advice is communicated.

Ability to understand English

- Evidence that an appropriate enquiry has been made about the client's ability to understand spoken and written English¹. The client should be asked whether they are able to communicate with an adviser in English or need the assistance of interpretation.
- Evidence that an appropriate foreign language interpreter has been arranged if required by the client for whom English is not their first language. Staff with appropriate language ability may be involved in appointments in place of an outside interpreter. To avoid potential conflicts of interest, it is often not appropriate to rely on interpretation by a family member of the client.
- It is not expected that letters will be written in the client's first language but correspondence needs to be tailored to the client's ability to understand it, using plain English with appropriate measures taken to ensure that the client understands.

Clients with a disability who require a reasonable adjustment

- Where the client has a disability there is evidence that the client has been asked or an appropriate enquiry has been made as to whether an adviser needs to make a reasonable adjustment to how he or she communicates with the client. Note that disability includes a learning difficulty or disability, a mental health condition or a long-term health condition.

Other issues

- That consideration is given to seeing the client alone to avoid the risk of undue influence and potential conflicts of interest.
- Statements and affidavits filed in proceedings drafted to reflect the client's instructions. They must be capable of being understood by the client, to avoid placing the client in difficulty if cross-examined on its contents.

¹ Any reference to English in this section applies to Welsh for firms in Wales.

Why does this matter?

- If the needs and abilities of individual clients are not considered, there is a risk that advice that is given and the steps that are taken may not be understood by the client and may not be appropriate.

How can I check this on my files?

- Check whether the needs and abilities of the client have been fully recorded.
- See whether correspondence has been adapted to meet the needs of non-English speakers.
- See whether the conduct of the case reflects the information recorded about the client's needs and abilities.

What will help?

- Training for advisors so that they recognise the specific needs of vulnerable clients.
- Training for advisors so that they know how to adapt their practice to take these needs into account.

“Vulnerable clients were sensitively dealt with and to a high standard of client care.

See, for example, the file of T where the client was elderly, had disabilities and was the victim of bullying and intimidation by her son.

The fee-earners went to some lengths to support her through the proceedings.”

“Fee - earners dealt sensitively with clients who were clearly vulnerable and in stressful circumstances.

See the file of S where the client was of limited ability and vulnerable. She was assisted through care proceedings, with an inevitable outcome.

The fee-earner retained her instructions through to the final order, going to considerable lengths to provide her with support, to include ensuring she attended the expert appointment.”

13. Is full costs information provided?

What are Peer Reviewers looking for?

- Costs information that is consistently provided, reviewed and updated, where the client needs this.
- Costs information that is not provided unnecessarily, for example to parents in care proceedings.
- Advice about potential liability for costs given at the outset and at relevant stages of the case, for example when settlement proposals are considered.

Why does this matter?

- Where the Solicitor's and/or Statutory Charge may apply, the client needs to be aware of the amount of their potential liability and when this must be paid.
- The client cannot properly consider terms of settlement in financial cases without understanding the costs position.
- The provider needs to ensure that the level of funding is sufficient for the work carried out, to avoid irrecoverable costs being incurred.
- It is a professional conduct requirement to provide costs information.

How can I check this on my files?

- See if an initial estimate has been given.
- Check if 6 monthly updates have been provided.
- See if the costs at conclusion are in line with the estimates given and, if not, why not.

What will help?

- Office procedures that provide a prompt for updates every 6 months and when any existing estimate is reached.
- Internal file reviews that deal with costs issues.

“The firm tended to adopt a “broad brush” rather than tailored approach to costs estimates which were not broken down between fees.

VAT and disbursements; when estimates were reviewed there was no apparent evidence on the files that Clients were being told the actual amount of costs to date...

*...On the file of **S**, actual costs exceeded the funding certificate limitation, an example of where the firm, not only the Client, would have benefitted from periodic consideration of the actual costs incurred.”*

Divorce

All of the General Issues (1 to 13) are likely be relevant for Divorce cases, as well as the following specific issues:

14. Are clients advised regarding costs orders in divorce proceedings?

What are Peer Reviewers looking for?

- Advice to the Petitioner client about costs prior to the issue of proceedings.
- Advice to the Respondent client about costs when notice of intended proceedings or the proceedings are received.
- Consideration of the possible aggravating effects of a costs claim and of the client's potential liability for costs under the Solicitor's and/or Statutory Charge.
- Action to secure payment where a costs order is obtained.

Why does this matter?

- The client may be caused financial loss if a costs claim is not pursued in appropriate circumstances.
- An inappropriate claim for costs may cause delay and increase the overall costs of the proceedings.
- The client needs advice about the effect of including or not including a costs claim when petitioning.
- The client needs advice about the effect of an order for costs being made when responding to divorce proceedings.

How can I check this on my files?

- Check the Petition to see what costs claim has been included.
- When acting for the Petitioner, check what advice was given about the costs claim prior to issue.
- When acting for the Respondent, check what advice was given and action was taken prior to the Acknowledgement of Service being filed.

What will help?

- When advising the Petitioner and Respondent, an initial questionnaire that provides a prompt for advice about this issue.
- When advising the Petitioner, standard initial advice regarding the inclusion or not of a costs claim, which can be tailored appropriately.
- Training to ensure that all fee earners are aware of the need to give advice regarding this issue.

*“In Mr **B**’s petition there was a claim for costs although both parties were believed to be receiving benefits.*

The client was not advised about this, the wife objected and it was left for a paralegal to ask a supervisor about how to deal with the matter.

The petition was then amended and sent to the other side for approval before filing with the court; this incurred additional costs and caused a delay before the proceedings were issued”.

*“In **B** the client was the petitioner and agreement was reached that the other party would meet half the client’s costs of the divorce proceedings.*

There was no evidence that the contribution from the husband was ever sought, and since the Statutory Charge applied the client suffered a financial loss as a result”.

15. Are clients advised regarding the merits of defending proceedings?

What are Peer Reviewers looking for?

- Advice to a client who wishes to defend proceedings:
 - Of the limited extent to which Legal Aid is available.
 - Of the possible methods of compromise, for example undefended cross-decrees.
 - That it may be agreed that allegations made in a Petition can be disputed if raised in subsequent proceedings.

Why does this matter?

- Defended proceedings rarely achieve any positive result but will increase the time, acrimony and cost of the case.
- If the Respondent client wishes to be divorced and does not understand the alternatives to defending proceedings, then proceedings may be defended unnecessarily.
- If the Petitioner client is faced with defended proceedings, then they need to understand the options available to progress the case and the limits on the funding available.

How can I check this on my files?

- Check the advice given to the client whenever the client or the other party raises the possibility of defended proceedings.
- See if the advice has been effectively delivered by checking what action the client decided to take as a result.

What will help?

- Training to ensure that all advisors are aware of the options available.
- Effective supervision so that more difficult cases and clients are identified and support can be given to advisors who need this.
- Providing advisors with a standard form of wording to use where the right to dispute allegations is reserved – see notes to rule 2.12 of the FPR 1991 in the Family Court Practice.

“Clear advice was given about the limited prospects and benefits of defending divorce proceedings (D).”

16. Are clients advised regarding the extent to which issues about children will be dealt with in divorce proceedings?

What are Peer Reviewers looking for?

- Advice that orders relating to children will not normally be made within divorce proceedings.
- Advice that, where there is evidence of disagreement regarding the arrangements, the divorce may be delayed if the Court is not satisfied with the proposed arrangements for the children.
- Advice that both spouses continue to share Parental Responsibility for their children and the meaning of this.

Why does this matter?

- The client may assume that Court orders are routinely made, for example a “custody” order.
- The client needs to know that disagreement regarding the arrangements for the children may delay divorce proceedings.
- The client should be aware that any concerns regarding the children need to be dealt with separately from the divorce proceedings, for example if there are difficulties with contact arrangements.
- Future disputes may be avoided if the client is advised about their legal position concerning the children, the extent to which consultation and agreement is needed and what decisions can be made on a day-to-day basis without reference to the other party.

How can I check this on my files?

- See if advice is routinely given to married clients regarding Parental Responsibility.
- Check if all clients with children are made aware of the orders available to the Court under the Children Act 1989.
- Look for cases where it is clear from the file that there is a dispute about the children (either from correspondence or the Acknowledgement of Service) and see whether advice has been given to the client before the application for Special Procedure directions has been made.

What will help?

- Standard letters, leaflets or paragraphs that provide advice regarding Parental Responsibility and the availability of Children Act orders.
- Training for advisors about the Court's powers under section 41 of the Matrimonial Causes Act 1973.

*“In **B**, the advisor considered the situation regarding the children and advised about the possibility of the section 41 certificate being refused, although it was in fact granted.”*

17. Is advice given regarding the effects of Decree Absolute and of any subsequent re-marriage?

What are Peer Reviewers looking for?

- Advice that there may be adverse financial consequences of Decree Absolute.
- Advice about the effect of Decree Absolute on wills and inheritance.
- Advice that, unless already dealt with by the Court, financial claims may be brought at any stage in the future and that claims may be prejudiced by delay and re-marriage.
- Advice to the Respondent client regarding the re-marriage trap and that the client should not re-marry without first taking advice regarding a financial claim.

Why does this matter?

- The grant of Decree Absolute may adversely affect the client's financial position (for example, lost pension benefits), their occupation of property (if the property is in the other spouse's sole name) and inheritance from the other spouse. The client needs to be aware of these potential consequences before the application for Decree Absolute is made.
- The client may be unaware that there is no time limit on bringing a financial claim and may assume that if Decree Absolute is granted and no financial order has been made, this brings financial issues from the marriage to an end.
- Re-marriage will be significant in assessing a financial claim by the Petitioner and in most cases will prevent any claim by the Respondent. The client needs to be made aware of these consequences before re-marrying.
- A failure to advise regarding these issues exposes the provider to the risk of a negligence claim.

How can I check this on my files?

- Look at the advice given to the client before the application for Decree Absolute was submitted.
- Look at the advice given when the Decree Absolute was sent to the client.
- In each case consider whether the advice has been sent at the right time and whether it was sufficient.

What will help?

- A precedent letter setting out the potential effects of Decree Absolute and advising regarding the options in relation to financial issues, that is sent to the client either with or before the application for Decree Absolute is sent to the client for signature. See also Issue 27 (p.58).
- A precedent letter that is sent to the client with the Decree Absolute advising about the possibility of future financial claims and the effect of re-marriage.
- A checklist on the file that refers specifically to advice regarding the potential financial consequences of Decree Absolute and re-marriage, which can be marked to show that this advice has been given.
- Internal file review that focuses on this issue.

“There was no evidence of advice being given prior to applying for Decree Absolute as to the effect and implications of its pronouncement i.e. that the former spouse would no longer be entitled to any widow/widower's pension”.

“The advice given was incorrect. Petitioner clients should have been informed that if they remarried they would not be able to make any financial claims for periodical payments (maintenance), whereas it is Respondent clients who would not be able to make any financial claims. “

Domestic Abuse

All of the General Issues (1 to 13) are likely to be relevant for Domestic Abuse cases, as well as the following specific issues:

18. Do clients receive advice regarding the available remedies in domestic abuse cases?

What are Peer Reviewers looking for?

- Sufficient instructions taken about the client's individual circumstances.
- Evidence that appropriate remedies have been considered and that the client has been advised regarding these.

Why does this matter?

- In dealing with a domestic abuse case, the appropriate way to deal with the situation will depend entirely upon the individual client's needs. Any of the following may be appropriate:
 - Noting the incident but recording why no immediate action has been taken.
 - Advising the client to attend their GP.
 - Putting the client in contact with a local domestic abuse service.
 - Putting the client in contact with a housing advice service.
 - Advising the client to make a complaint to the police.
 - Sending a letter warning that if there are any further incidents the matter will be referred to the police and/or an application made to the Court for an injunction order.
 - Making an application to the Court, either immediately without notice or on notice to the respondent.
 - Considering linked Children Act proceedings.
- If the client is not aware of the different options that are available then there is a risk that either no action is taken or that the action taken is not effective.

How can I check this on my files?

- Look to see what advice was given about the available options, both where cases proceed to a full certificate and a Court application and where only initial advice is provided.
- Check for advice regarding the potential emotional harm which can be caused to children who witness domestic abuse, and the risk that the client could be treated as failing to protect their children if they do not take action to prevent the abuse recurring, or resume their relationship with an abusive partner.

What will help?

- Training all advisors dealing with domestic abuse work to ensure that they are aware of the range of options available.
- Attending any local domestic abuse forum or network to ensure that information about the resources available locally is obtained.
- Information available from:
 - Women's Aid www.womensaid.org.uk
 - Refuge www.refuge.org.uk
 - Men's Advice Line www.mensadvice.org.uk

“On the file of R the client clearly identified domestic violence issues. He had suffered two assaults and he stated that he was scared of his estranged wife. No advice was given as to personal protection remedies.”

19. Is the need for personal service explained to clients?

What are Peer Reviewers looking for?

- Advice to the client about the need for and importance of personal service
- Advice that in urgent cases where the client and/or children are at risk of abuse, the application need not be personally served on the other party before the Court can make an order.
- Advice that an order must be personally served on the other party to be effective and to ensure that the police can arrest for breach of a non - molestation order and that any power of arrest attached to the order can be exercised by the police.
- Where appropriate, advice that an application for committal must be personally served on the other party before the Court can exercise its powers.

Why does this matter?

- Failure to consider from the outset how the other party can be personally served can result in the action taken being ineffective.
- If potential problems with service are identified from an early stage, then attention can be focussed on how service is dealt with.
- If the client is not aware of the need for and importance of personal service, then information may not be provided which would be of assistance.

How can I check this on my files?

- Look at the initial attendance note to see whether instructions were taken regarding the arrangements for service, whether the client had the other party's address or another address for service, and if the client was asked for a description of the other party or a recent photograph.
- See if sufficient details were given to the process server to enable the other party to be served. For example, check whether a description or photograph of the other party was supplied, together with details of any vehicle driven by them or any other details to enable the process server to correctly identify the other party.

What will help?

- Training to ensure that all advisors are aware prior to the issue of proceedings of the need to establish whether the other party can be personally served.
- A specific section in any initial instruction sheet to deal with personal service.
- Standard written advice that confirms the advice given in person regarding the need for personal service.

“When the without notice order was obtained the client was reminded that it was not effective until served, and she was informed as soon as this happened.”

20. Are clients advised regarding the meaning and effect of a Power of Arrest?

What are Peer Reviewers looking for?

- Advice about the relevant law - that a power of arrest will be attached to an occupation order if the Court considers that the other party has used or threatened violence against them or a child, unless the Court considers that there is adequate protection without a power of arrest.
- Advice about the relevant procedure - that the order and power of arrest have to be personally served on the other party and a copy lodged with the relevant police station.
- Advice about the effect of a Power of Arrest - that the other party can be arrested if the police suspect the other party of breaching the order and may be liable to a term of imprisonment and/or a fine if found guilty.
- Advice to the respondent client regarding the importance of abiding by the terms of the order and the consequences of any breach.

Why does this matter?

- The client needs to be aware that if they report a breach to the police, the other party may be arrested and brought before the Court when the client will need to give evidence about the breach.
- The client also needs to be aware that if found guilty of a breach of the order then the person responsible will be in contempt of Court and may be liable to a term of imprisonment and/or a fine.

How can I check this on my files?

- Look at the information given to clients at the outset of the case and also when an order has been made. See whether the meaning of a power of arrest has been explained to the client, whether the client has been advised to report any breach to the police and whether the client has been informed what will happen if the other party is arrested.
- Where a power of arrest has been attached to an occupation order made against a client, check that the client has been advised of the consequences of a breach of the order, including the fact that they could be arrested without a warrant, brought before the Court and sentenced to a term of imprisonment and/or a fine.

What will help?

- An information sheet given to the client at the outset of the matter explaining the effect and meaning of a power of arrest
- Specific advice in the letter to the client following the making of an order with a power of arrest attached.

*“In **S** the letter following the first hearing made no reference to the need for personal service or the effect of a power of arrest.”*

21. Where undertakings are proposed, are clients advised about the differences between an undertaking and a court order?

What are Peer Reviewers looking for?

- Advice about findings of fact. An undertaking is not an admission of the allegations and, if an undertaking is given, the Court has not made any findings of fact. However if an order is made, generally the allegations have been accepted by the Court.
- Advice about enforcement. An undertaking is a promise to the Court to do or not to do a specified action. It can not have a power of arrest attached to it and enforcing an undertaking requires a separate application to commit the other party. However if an order is made then a power of arrest can be attached and a separate committal application may not be required in the event of a breach.
- Advice about procedure. If an undertaking is accepted the client will not have to give evidence against the other party.
- Advice about costs. A costs order will not be made against the other party if an undertaking is given, but when an order is made the other party may be ordered to pay some or all of the client's costs.

Why does this matter?

- The Applicant client needs to understand the difference between an order and an undertaking to decide whether to accept an undertaking if one is offered.
- The Respondent client needs to understand that an undertaking is a promise to the Court and is enforceable.

How can I check this on my files?

- Look at the information about possible outcomes given to the client at the outset of the case.
- Where an undertaking was offered (either before or at a hearing) check whether this was discussed with the client and what advice was given.

What will help?

- An information sheet given to the client at the outset of the case setting out the possible outcomes following the application for an injunction.
- In cases where an undertaking is offered, a letter setting out the differences between an undertaking and an order, with specific reference to the client's particular circumstances.

“Clients requiring remedies for domestic violence were given a full explanation of the difference in effect and implications of an undertaking being given, and an Order from the Court.”

22. Has advice been given regarding enforcing an injunction or undertaking?

What are Peer Reviewers looking for?

- Advice from the outset as to how an injunction or undertaking can be enforced
- Once an order has been made, advice to the client about the action they should take in the event of any breach.
- In the event of a breach, advice about the available remedies depending on the type of order made, including alternatives to a committal application where appropriate, and about the procedure on committal and/or criminal proceedings. This should include the likely need for the client to attend and give evidence.
- Advice regarding the penalties that may be applied by the Court.

Why does this matter?

- The client needs to know what can happen if an injunction order or undertaking is breached, so that they can consider whether to report the breach to the police, apply for the other party's committal or whether a warning letter should be sent. This is particularly important where the parties have children and there is on-going contact.
- The point of obtaining an order or undertaking is to provide for the client's safety, and the client's safety will be at risk if they do not know what action to take and what help is available.
- Breaches of injunction orders and undertakings often happen out of office hours. The client therefore needs to know what to do if there is a breach and they cannot contact their advisor immediately.
- Some clients, especially where there is on-going contact with the children, may not want the other party to be sent to prison.

How can I check this on my files?

- Check the advice given at the outset regarding enforcement.
- See whether advice was given about the difference in enforcement when considering whether to accept an undertaking from the other party.
- Look for a letter after an order was made or an undertaking given, about what the client should do in the event of further difficulties.

- Look for evidence of any breach and then check the advice given following the breach.

What will help?

- An information sheet given to the client at the outset of the case setting out enforcement procedure and the difference in enforcement between a non-molestation order and an occupation order.
- A standard paragraph, for use in a letter to the client informing them of an offer of an undertaking from the other party, explaining the differences in enforcement procedure.
- A standard paragraph, for use in a letter to the client following the making of an order or undertaking, advising the client what to do if there is a breach and detailing the enforcement procedure.
- A standard paragraph, for use in a letter to the client to the client following any alleged breach of an order or undertaking, confirming the available remedies.

“Although an injunction was obtained on the matter of V no advice was recorded on the file in relation to the court procedure or what the client could do if the order was breached by the respondent.

The written advice simply said “...you instructed us to apply for an ex parte injunction.”

“The supplier acted for the respondent who was told that he could not obtain Public Funding and therefore he should offer an undertaking.

He was told that the Court could not attach a power of arrest to an Undertaking, but he was not told of the effect of breach of the undertaking.”

Finances

All of the General Issues (1 to 13) are likely to be relevant for Financial cases, as well as the following specific issues:

23. Do clients receive appropriate advice regarding severance of any joint tenancy?

What are Peer Reviewers looking for?

- Sufficient instructions taken to identify any jointly owned property.
- Official Copies of the Land Register, obtained if it is not clear whether property is jointly owned.
- Advice regarding the meaning and effect of severance and the steps required to sever any joint tenancy.

Why does this matter?

- As the client is seeking advice, it is clear that the relationship between the parties has changed since any jointly owned property was purchased.
- The client needs to know what will happen to any jointly owned property in the event of their own death or the other party's death.
- If the client wishes to make different arrangements for what will happen, then advice is needed about how this can be done.
- If the advice and action concerning service of a Notice of Severance or registration with the Land Registry is not correct, then the client's wishes may not be carried into effect.

How can I check this on my files?

- See whether the client's initial instructions record whether any property is jointly owned.
- Look for advice about severance at the outset of the case.
- Check that Official Copies of the Land Register have been obtained for any relevant properties.

What will help?

- An initial questionnaire that prompts an enquiry about jointly owned property and then advice about the possibility of severance.
- A standard letter or leaflet regarding financial issues that advises about severance, provided that this is only used where there is property to which it applies.
- Refer to section 36(2) of the Law of Property Act 1925 (service).
- Refer to Land Registry Practice Guide 19 “Notices, restrictions and the protection of third party interests in the register” (section 8.19)
www.landreg.gov.uk/publications

*“On the file of **H** the client was not sure whether the property was jointly owned, no steps were taken to obtain Office Copy Entries.”*

24. Do clients receive appropriate advice regarding joint assets and liabilities?

What are Peer Reviewers looking for?

- Sufficient instructions taken to identify joint assets and liabilities.
- Advice about the possibility of freezing or closing joint accounts or making them joint signatory accounts.
- Advice about access to credit cards and overdrawn accounts, debt repayments and the risk of further advances from existing mortgagees and lenders.

Why does this matter?

- There is a risk that the client's financial position will suffer if advice is not given about protecting the client's interest in joint assets and limiting the client's responsibility for joint liabilities.
- A failure to advise regarding joint liabilities may cause both immediate financial loss and continuing problems for the client due to the effect on their credit rating.

How can I check this on my files?

- Check whether the client's initial instructions record whether there are joint assets or liabilities.
- See if the client has been asked to provide full details of all assets and liabilities.
- Look to see if the position has been reviewed, once there has been an exchange of financial disclosure.

What will help?

- An initial questionnaire that prompts an enquiry about joint assets and liabilities and the advice needed about these.
- A standard letter or leaflet regarding financial issues that advises about joint assets and liabilities, provided that this is only used where there are relevant assets or liabilities to which it applies.

“The firm needs to exercise care when dealing with joint debt in ancillary relief matters.

It was not clear that there was an understanding on the part of the firm that as regards a creditor the liability for any joint debt is joint and several.

*For example on the file of **H**, the client was advised that he was responsible for half the overdrawn account.*

This was not so, had the wife not paid at all the bank would have sought payment from him.”

25. Do clients receive appropriate advice regarding Financial disclosure?

What are Peer Reviewers looking for?

- Advice about the meaning of full and frank financial disclosure.
- Advice that financial disclosure is essential:
 - To ensure that the client receives a reasonable share of the matrimonial assets.
 - To enable the provider to advise about a reasonable outcome.
 - To achieve a binding final agreement.
- Advice that there is a continuing duty of full and frank financial disclosure.
- Advice that a failure to provide full and frank financial disclosure may have serious consequences.

Why does this matter?

- A client who agrees a financial settlement without obtaining full disclosure may not receive a fair share of the matrimonial assets.
- A client who settles financial matters without providing full disclosure may not achieve a final settlement.
- A provider that does not give clear advice regarding the need for disclosure may be exposed to a negligence action.

How can I check this on my files?

- Read the first letter to the client dealing with financial issues to see whether financial disclosure was dealt with.
- Check the letters sent to the client at the time of preparing voluntary disclosure or Form E to see what advice was given.

What will help?

- A standard paragraph in the section of the initial letter dealing with financial issues making clear why disclosure is required before advice can be given.
- A standard letter that is sent when financial disclosure is being prepared highlighting the importance of this issue.
- Training for advisors to ensure that financial matters are not settled without disclosure except where, in appropriate circumstances, a disclaimer is signed.
- The Resolution “Guide to Good Practice on Disclosure in Ancillary Relief” may be useful.

“These matters were both concluded by consent order without having received the husband’s disclosure and without advising on the consequences of not having had disclosure.”

26. Do clients receive advice regarding pension options?

What are Peer Reviewers looking for?

- Clear advice that pensions are a relevant matrimonial asset.
- Where appropriate, explanation of the available options, namely pension sharing, pension attachment and offsetting and what these mean.
- Advice as to whether pension issues are likely to be relevant in each client's case and if so, what options are available.

Why does this matter?

- In many cases one spouse's pension will be a significant matrimonial asset.
- Although many clients will have heard of pension sharing, there will be other clients who do not understand that a pension can be an asset of the marriage.
- A provider that does not give take sufficient instructions or give clear advice regarding pension issues may be exposed to a negligence action.

How can I check this is on my files?

- Check the initial attendance note to see whether the client's instructions regarding pensions issues have been obtained.
- See whether valuation evidence has been obtained where this is required.
- When terms of settlement are agreed, see whether it is clear how any pension assets have been dealt with and taken into account.

What will help?

- An initial questionnaire that prompts an enquiry about pension assets.
- A standard letter or leaflet regarding financial issues that emphasises the importance of pensions and the ways in which they may be dealt with.
- Ensuring that cases involving pension issues are only dealt with by advisors with sufficient experience and expertise.

“On N the fact finding with the client was not completed early enough (i.e. until after she was divorced), so that there was no questioning of the client in relation to her husband’s employment history.

The concern was that the husband was gravely ill; he died after the divorce but before the finances were resolved and was found to have a pension which she lost out on”

27. Are clients advised regarding the possibility of a “clean break” Consent Order, where appropriate?

What are Peer Reviewers looking for?

- Advice that there is no time limit on the making of a financial claim.
- Advice that only a Court can dismiss the possibility of future claims.
- Tailored advice about the merits and meaning of a “clean break” order and the need for prior financial disclosure.

Why does this matter?

- There is a risk that the client will face an unexpected financial claim years after the marriage ends.
- There is a possibility that some financial issues will be left unresolved.
- There is a concern that if this advice is not given, then insufficient advice is given regarding financial issues more generally.

How can I check this on my files?

- Check that instructions have been taken regarding financial issues in all cases.
- Look for evidence that the client has been advised about the need for financial disclosure.
- See if there is clear evidence of the ownership of the former matrimonial home on the file.
- At the conclusion of the case, see if the client has been given any advice about the possibility of future financial claims.

What will help?

- An initial questionnaire dealing with the financial aspects of the marriage, which requires completion in all cases.
- A standard initial letter that requires the client's instructions regarding finances and the advice given to be recorded.
- A standard letter that is sent when the Certificate of Entitlement is received that deals with (a) the financial consequences of Decree Absolute and (b) the possibility of a Consent Order to resolve financial matters.
- The Resolution Precedents for Consent Orders (8th edition at present) are a useful resource.

“There was no advice about the finances, particularly the merits of a clean break order.

The client’s instructions that finances were sorted out at the time of separation was accepted without further enquiry.”

“There was no advice at the outset or throughout the duration of the matter about the possibility of a clean break consent order to resolve the financial link between the parties.

The client had a new partner and said she was going to get remarried and therefore the lack of advice had potentially prejudicial effects for the client.”

Private Law Children

All of the General Issues (1 to 13) are likely to be relevant for Private Law Children cases, as well as the following specific issues:

28. Are clients advised about Parental Responsibility?

What are Peer Reviewers looking for?

- Advice to the client about whether or not they have Parental Responsibility.
- Advice about the meaning and effect of Parental Responsibility.
- Advice to a client with Parental Responsibility:
 - That they share that responsibility with any other person with Parental Responsibility and should try and reach agreement as to significant decisions that need to be made in relation to their children.
 - That if they have a disagreement about the exercise of Parental Responsibility with the other person then the Court may have to make the decision.
 - If relevant, the ways in which other people, in particular the children's father, can obtain Parental Responsibility.
 - If relevant, the factors the Court will take into account in deciding an application for Parental Responsibility.
- Advice to a client without Parental Responsibility:
 - That they do not have full legal authority to make decisions about their children.
 - That professionals involved with their children are not obliged to give them information about the children.
 - How to obtain Parental Responsibility and the factors that a Court will take into account when deciding an application.

Why does this matter?

- The client needs to know if they do or do not have Parental Responsibility to enable them to understand their legal position concerning their children.
- The client needs to understand their legal position so they know which decisions about their children require consultation with the other party.

How can I check this is on my files?

- See whether the initial file note or client information sheet identified who has Parental Responsibility.
- Check that the initial advice letter had specific advice about Parental Responsibility.
- Check whether the client was given the appropriate information sheet/standard letter.

What will help?

- An initial questionnaire which has a section on Parental Responsibility.
- Standard advice letters, or standard paragraphs in advice letters, about Parental Responsibility, provided this standard information is tailored to the client's circumstances.
- A specific question about Parental Responsibility on internal review forms.

*“On **R** the client was never advised about Parental Responsibility despite the parties not having been married and also despite there being three files opened for her over a period to deal with the children.”*

“ He was provided with limited tailored advice concerning PR (that he did not hold PR for the child) but he was not advised how he might obtain it and whether he would satisfy the legal tests (on his instructions, he would).”

29. Are clients advised regarding the role of CAFCASS?

What are Peer Reviewers looking for?

- Advice regarding the following:
 - That the CAFCASS officer is independent of all the parties in the case.
 - That the CAFCASS officer may be involved in the case in a number of different ways, at the first directions appointment, under the child interview scheme or to prepare a full report.
 - That the CAFCASS officer has a duty to investigate and is likely to want to see all the parties to the case and the children.
 - The need to cooperate with the CAFCASS officer.
 - That the CAFCASS officer's responsibility is to make recommendations to the Court about what is in the children's best interests.
 - That the Court will give significant weight to the recommendations of the CAFCASS officer in reaching decisions about the children.
 - (Where relevant) The possibility of a child being separately represented.
- Advice in similar terms about the role of the Social Worker, if Social Services are ordered to prepare a section 7 report.

Why does this matter?

- The client needs to be advised about the role of CAFCASS in order to:
 - Understand the importance of cooperating with the CAFCASS Officer.
 - Make an informed decision about the recommendations made by the CAFCASS officer to the court.

How can I check this is on my files?

- See if the client was given any appropriate information sheet or standard letter about the role and duties of the CAFCASS officer.
- Where the involvement of CAFCASS is likely, check that advice was given about this likely involvement at the time of making an application to the Court.
- Look for the advice given to the client when the Court directed CAFCASS to become involved.

What will help?

- Standard information provided to the client at the time proceedings are issued which explains the role of CAFCASS, so that the client is prepared if CAFCASS become involved.
- A letter to the client after the Court has directed CAFCASS to become involved which refers to the information already given in any standard letters/information sheets but tailors that advice to the client's circumstances.

*“The attendance note on the case of **H** said the fee earner had “advised in relation to the Children Act and the element of Cafcass”.*

It was not clear what advice had been given.”

30. Are clients advised regarding the Courts' approach to cases involving Domestic Abuse?

What are Peer Reviewers looking for?

- Advice to the client, whether the victim or perpetrator of domestic abuse, that:
 - They must inform the Court at the earliest possible opportunity of any incidents of domestic abuse that they want the Court to consider (which will normally be in Form C1A).
 - The Court may order a hearing to decide on the factual basis of the domestic abuse.
 - Domestic abuse will not of itself prevent the Court from making an order in favour of the perpetrator but that it will be an important factor in deciding the type of order and any conditions that ought to be attached to that order.

Why does this matter?

- Domestic abuse is recognised in statute and by the Courts as potentially damaging to children and may cause them significant harm.
- The client needs to know how seriously the Courts take domestic abuse so that they can take this into account when making decisions for their children.

How can I check this on my files?

- Check the initial instructions given by the client about their relationship with the other party.
- Look to see if there have been any previous injunction proceedings or whether the matter has been considered as unsuitable for mediation due to domestic abuse.
- Check form C1A and any statements or reports filed with the Court for details of previous domestic abuse.

What will help?

- An initial questionnaire which has a section on domestic abuse.
- Standard advice letters, or standard paragraphs in advice letters, about domestic abuse and how this is relevant, provided this standard information is tailored to the client's circumstances.
- A specific question about domestic abuse on internal review forms.

“The client had sent a letter from prison dated the 20.10.2006 (which led to the initial meeting) stating that his former partner had left due to domestic violence and she ‘got put in a womens refuge’.

There was no confirmed advice about the effect of domestic violence upon any contact application”.

31. Is advice given where there is a risk of abduction?

What are Peer Reviewers looking for?

- Advice regarding the relevant steps that may be taken to prevent abduction, which may include:
 - Implementation of supervised contact or suspension of contact.
 - A prohibited steps or residence order.
 - A non-molestation order under the Family Law Act 1996, an injunction made under the inherent jurisdiction of the High Court or an injunction in civil proceedings.
 - The requirement of a financial bond and/or surety in a case where leave is being given to remove the child temporarily from the jurisdiction.
 - Control of passports.
 - The 'port alert' system.
- Advice regarding the practical and emergency steps the client should take if a child is abducted.
- If abduction has occurred, advice regarding the remedies available. These remedies vary depending on the location of the child.

Why does this matter?

- If advice is given and the necessary emergency action is taken, this may provide protection and a deterrent.
- It is important to take all possible steps to prevent child abduction not least due to the difficulties in tracing and recovering an abducted child.
- The consequences of insufficient advice or action can be devastating for the client and the child.

How can I check this on my files?

- See whether the initial file note or client information sheet clearly identified if there was a risk of abduction. The instructions taken from the client may have recorded threats or a history of significant non-compliance with agreed arrangements or Court Orders. Alternatively, the circumstances of the case may raise child abduction as a possible issue; for example, the other party may not have any continuing connection or ties in the jurisdiction where the child is living. In either of these cases there should have been some enquiry about risk.
- Check whether the initial file note/advice letter recorded specific advice to the client in relation to the risk of abduction and the action that could be taken.

What will help?

- A clear assessment of risk, i.e. checking where the child's passport is, finding out if the other party has links/family outside the country, checking the country of origin and any history of non-compliance with orders.
- Refer to practical guidance from Reunite (0116 2556 234 or www.reunite.org)
- A specific question on risk of abduction on internal file reviews.
- If abduction occurs, even if within England and Wales, discussing the case with the International Child Abduction and Contact Unit (ICACU) on 020 7911 7127.
- Refer to the current list of signatories to the Hague Convention at www.officialsolicitor.gov.uk

“The client was concerned that the father might take the children out of the country.

The Client sought advice [and] the file note recorded “possibly residence order? What is ward ship?”

There was no letter of advice following this and the issue of taking the children out of the country was not addressed by the firm.”

32. Is advice given about the weight to be given to the wishes and feelings of older children?

What are Peer Reviewers looking for?

- Advice about the welfare checklist that refers specifically to the child's ascertainable wishes and feelings, to be considered in light of the child's age and understanding, where these are likely to be relevant.
- Advice that the older the child, the more care the Court will take to consider the child's wishes and feelings and the more weight it will give to them.

Why does this matter?

- The Children Act 1989 acknowledges the importance of the ascertainable wishes and feelings of the child as one of the 'check-list' of factors that a court must have regard to when deciding whether to make an order.
- The client needs to have a realistic expectation as to the weight that will be given to the child's wishes and feelings.

How can I check this on my files?

- Check the initial file note or client information sheet to see if advice has been given on this issue.
- See if the advice given refers to the weight that will or will not be given to the wishes and feelings of the child in light of their age and understanding.

What will help?

- An initial questionnaire that records the age of the child.
- A letter, paragraph in a letter, or leaflet that includes advice regarding the child's wishes and feelings and the weight that may be attached according to the child's age and understanding.
- Ensuring that cases involving children are dealt with by advisors with sufficient expertise.
- Inclusion of a specific question in relation to the child's wishes and feelings on internal review forms.

“The child was 9 years old.

There was no advice as to how much weight may be attached to the child's views until after the second hearing.

On E, there was no tailored advice given to the client either at the outset of the case or throughout the matter about the weight that would be attached to the wishes and feelings of the children (who were aged 12 and 10).”

Public Law Children

General Issues (1 to 12) are likely to be relevant for Public Law Children cases, as well as the following specific issues:

33. Are clients advised about the local authority's responsibilities when proceedings have not been issued?

What are Peer Reviewers looking for?

- Advice that each local authority has a duty to safeguard and promote the welfare of children within their area.
- Advice that covers the following, if relevant:
 - Section 47 investigations
 - Initial child protection conferences and child protection reviews
 - The child protection register
 - The child protection plan
 - S17 Children in Need
 - Letter before proceedings and pre-proceedings meeting with the Local Authority

Why does this matter?

- The client needs advice about the local authority's responsibilities so that they can respond appropriately to Social Services' involvement with their family.
- If the client is not advised, then the risk is that the client will be resistant to Social Services' involvement and will be seen as uncooperative and unable to consider the best interests of their children.
- A client who is uncooperative risks a confrontational relationship with Social Services which may lead to more protracted involvement or Court proceedings.
- A client who is not advised may be less likely to be aware of and take advantage of services that Social Services may offer the family.

How can I check this on my files?

- See whether the initial file note and advice letter to the client had tailored advice in relation to Social Services' responsibilities.

What will help?

- Standard information/advice sheets setting out information about Social Services' responsibilities in general terms.
- An initial advice letter that gives the client advice tailored to their family's involvement with Social Services.

“[There was a] Lack of advice about the criteria for registration on the Child Protection Register and the effect of registration (W).

It was not sufficient to refer the client to a letter she had received from Social Services for advice.”

34. Are clients advised regarding the role of the Children's Guardian?

What are Peer Reviewers looking for?

- Advice to the client that:
 - The Children's Guardian is appointed by the Court and instructs the solicitor who is appointed to represent the children.
 - The Children's Guardian is independent of the local authority bringing the proceedings and of the other parties to the case.
 - The Children's Guardian has a duty to investigate and will see all the parties to the case, the children and other people who are significant in the children's lives.
 - The client needs to cooperate with the investigations of the Children's Guardian.
 - The primary role of the Children's Guardian is to safeguard the children's interests. Their recommendations to the Court will be about which orders, if any, will best safeguard the children throughout their childhood.
 - The Court will give significant weight to the recommendations of the Children's Guardian in reaching decisions about the children.

Why does this matter?

- The client needs advice about the role of the Children's Guardian in order to:
 - Understand the importance of cooperating with the Children's Guardian.
 - Make an informed decision about the recommendations made by the Children's Guardian to the court.

How can I check this on my files?

- Check whether the client was given an appropriate information sheet/standard letter.
- Look for tailored advice to the client after the appointment of the Children's Guardian.

What will help?

- Standard information/advice sheets/letters provided to the client at the time proceedings are issued dealing with the role of the Children's Guardian.
- A letter to the client after the Court has appointed the Children's Guardian which repeats the information already given in any standard letters/information sheets and provides advice tailored to the client's circumstances.

“There were several occasions where an explanation of the terms used would have been of benefit to the client.

On the file of F there was no discussion or explanation as to who the Guardian was or his role.

The term “party status” was not explained to the client.”

35. Are clients advised about issues concerning confidentiality and experts?

What are Peer Reviewers looking for?

- Advice to the client that reports produced or obtained in the course of children proceedings must be disclosed, even if they are unhelpful to the client.

Why does this matter?

- A client should know that in certain circumstances adverse information can be disclosed.

How can I check this on my files?

- Consider whether any issues of confidentiality have arisen in the case.
- Look for advice given at the relevant time, for example about the instruction of an expert or when a particular issue arose.
- Look for advice contained in a standard letter/information sheet and tailored to meet the specified circumstances of the case.

What will help?

- Standard information/advice sheets provided to the client at the appropriate time advising in general terms.
- A letter to the client specifically referring to the issue when it arises in the case.

36. Is advice given at an interim stage regarding contact with a child in care?

What are Peer Reviewers looking for?

- Advice regarding the law. The Local Authority has a duty to allow reasonable contact between a child in care and the child's parents, guardian, and a person with a residence order for the child immediately before care proceedings were issued.
- Advice regarding reasonable contact. This should be assessed in light of the client's circumstances. Legal advice should be given about what would be realistic, taking into account the practical arrangements.
- Advice regarding procedure and the action that can be taken if reasonable contact cannot be agreed.

Why does this matter?

- The level of contact that the client maintains will be important to the client and child in the short term and may be significant in determining the longer term outcome.

How can I check this on my files?

- Look for a file note explaining the law to the client and consideration of the contact proposals.
- If contact was not considered to be enough, check whether the issue was raised with the other parties, Children's Guardian, and local authority in correspondence or at Court or at an advocates' meeting.
- See if contact was addressed in any position statements filed.

What will help?

- Ensure that the local authority's proposals for contact have been clarified and the matter discussed with the client.

“On H the local authority obtained an Emergency Protection Order for the client’s baby, who was removed from her.

At the first court appointment there did not appear to have been any discussion about the client’s contact with her new baby.

Later on there was schedule for contact drawn up but this did not appear to have been sent to the client (26.07.06).”

37. Do solicitors meet children when acting for them?

What are Peer Reviewers looking for?

- Evidence that the solicitor has met with and taken appropriate instructions from the child client. There may be cases when there is a considered decision, in conjunction with the Children's Guardian, not to see the children. This is a decision that should be made on an individual basis. The reasons should be recorded on the file.

Why does this matter?

- Children are clients. They are parties to public law proceedings and have a right to legal representation. Solicitors acting for children have to be clear that they act for the child and not the Guardian.
- Meeting the children matters because it:
 - Makes the solicitor-client relationship a real one, as even with the youngest child the solicitor will have a realistic picture of who they are acting for.
 - Enables even young children to have their wishes and feelings advocated directly to the court.
 - Enables the solicitor, when acting for older children, to assess whether those children are of sufficient age and understanding to give instructions direct to the solicitor.

How can I check this is on my files?

- Look for a file note of the solicitor meeting the children or an explanation of why meeting the children was not considered appropriate.

What will help?

- A specific question in relation to meeting the children on internal review forms.

“On T there was nothing on the file to suggest that the solicitor had been to see them [the children] and, if that had not happened, why that decision was made.”

38. Is the child's competence dealt with, where an older child has a different view from the Children's Guardian?

What are Peer Reviewers looking for?

- Evidence that the child's view has been considered in the light of their age and understanding, as they may be competent to give their own instructions. If the child's view differs from the view of the Children's Guardian, the solicitor for the child may need to take instructions directly from the child.
- Evidence that the issues of competence and separate representation have been considered for every child in a sibling group.

Why does this matter?

- A solicitor may have to consider taking instructions directly from the child rather than from the Children's Guardian, with the Children's Guardian considering alternative legal representation.
- This issue should be considered at the earliest point to ensure that the child has the best possible opportunity to put their case forward. This ensures adequate timetabling and the opportunity for the child's solicitor to take instructions throughout the case.

How can I check this on my file?

- Check whether the solicitor has seen the child and discussed the Children's Guardian's views with the child, taking into account the child's level of understanding.
- Look to see whether the child's views differ from those of the Children's Guardian and whether any discussion took place with the Children's Guardian following the meeting, to narrow/define the issues and differences.
- The child was considered competent, check what reasons were given. See whether competency was considered in light of the child's circumstances and see what view was reached.
- If the child was not considered competent, check that the reasons for this decision were recorded.

What will help?

- A specific question about competency is considered when meeting the child for the first time.
- Ensure that any decision about competency is confirmed in writing with the Children's Guardian.

Family Peer Review Panel Members

(as of 15 October 2010)

Riaz Bashir
Kay Boswell
Jeremy Charlton
Andre D'Ambra
Jeanette Ellis
Louise Garner
Lesley Gaskell
Sian George
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Linda Howell
Cherise Luke-Bennett
Clare Philbrock
Robert Prigg
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Philip Scott
Jacqueline Skelton
Trevor Smith
Rebecca Wigglesworth
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