



Legal Aid
Agency



IMPROVING YOUR QUALITY IN CRIME

A guide to common issues identified through Peer Review

Foreword to the Crime Improving Your Quality Guide

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

practice and areas in need of improvement.

We are pleased to introduce this new edition of '*Improving Your Quality – Crime*', which is intended to give the profession access to Peer Review findings and help support those wishing to achieve a good level of quality of legal advice and work. The guide will also be taken into account by Reviewers in assessing work seen under Review.

The guide makes available common quality issues identified by Crime Peer Reviewers. Derived from the entire body of peer review reports, analysis has concentrated on those issues frequently contributing towards lower ratings at Peer Review. Each issue is divided into 3 parts:

1. A brief description of why the issue has been identified as important.
2. Suggestions as to how an organisation can identify and address areas of concern.
3. An insight into Peer Review findings illustrated by anonymised extracts from Peer Review reports.

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. It is hoped that the suggestions in the guide will be found helpful by all providers, but some providers may need to adapt the suggestions according to their particular size and profile.

This work has encouraged a more general debate concerning standard setting, and the best approaches to dealing with specific quality of advice issues for Crime work. We continue to welcome the opening up of the world of legal competence to such scrutiny and debate.

Professor Avrom Sherr
Institute of Advanced Legal Studies
On behalf of the Peer Reviewer Panel in Crime

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1. Does the caseworker have sufficient training and experience to deal with the case?

Why does this matter?

From the advice given and action taken at the Police Station at the start of the case, to advice on appeal at the end, it is important to match the skills of the caseworker to the demands of the case.

... At the Police Station

The inappropriate use of inexperienced caseworkers on serious cases at the Police Station is frequently noted as a concern by Peer Reviewers.

It often gives rise to later concerns about the suitability of the advice given. Mistakes, particularly about whether to give an account, remain silent, or submit a prepared statement may be irredeemable, and therefore can seriously prejudice the client's case.



... In Case Preparation

Similarly, the inappropriate allocation of caseworkers in case preparation at the proceedings stage can result in them attempting work which is beyond their level of competence. Apart from obvious concerns that the case may be insufficiently or badly prepared, this can demoralise, and erode the confidence of, the caseworker in question.

... Generally

Poor caseworker allocation is likely to result in unsatisfactory outcomes and consequent client dissatisfaction.

It also jeopardises the reputation of the provider and increases the risk of wasted costs orders and other professional sanctions.

Conversely, Peer Reviewers recognise that it is not realistic to expect to see senior caseworkers spending their time working on unchallenging early guilty pleas.

What might help us to get this right?

- Ensure that the skills, training, experience and seniority of the colleague allocated the case at the outset match the seriousness of the offence and the complexity of the case. Some providers achieve this by appointing a person of sufficient seniority to the specific task of allocating each new case.
- At other providers, cases are not specifically allocated. Instead, the practice is to let the caseworker who makes the initial contact with the client keep the case. If this is your practice, then consider introducing a system to ensure that the case is reviewed at an early stage.
- Inner city providers, especially in London, rely heavily on outside agencies, particularly Counsel and Police Station Representatives. Maintain lists of approved Counsel and other agents. Ensure that caseworkers appraise their performances, and that there is a system for identifying and addressing weaknesses in work done by third parties. Create forms to ensure a consistent approach (See Chapter 7.)
- As cases progress, use your internal file supervision and review system to routinely re-assess the issues in the case and its complexity, and confirm that there continues to be a match with caseworkers' competence or the next step in their development (see SQM D4.1 Case allocation).
- If you have any reservations at all about whether caseworkers may be getting out of their depth, then intervene immediately; do not wait until mistakes are made and the situation cannot be retrieved. Intervention may have to result in re-allocation of the case, but often this can be avoided by introducing a higher level of supervision and more frequent reviews.
- Ensure that junior or inexperienced caseworkers are always closely supervised if they are working on serious cases. You may wish to schedule more regular case reviews and supervision sessions, to assess the quality of the work done and the ability of the caseworker performing the work.

- Ensure that your internal file supervision and review procedures are sufficiently thorough and robust, that they include police station work, and that they will identify and address issues such as the following:
 - Timeliness, especially of correspondence, compliance with court orders and the observance of other time limited procedures.
 - Whether client instructions are documented, understood and actioned.
 - Whether appropriate advice has been given at the police station regarding disclosure and instructions.
 - That there is a sufficiently detailed proof of evidence on file (if applicable).
 - That there is a full brief to Counsel on the file (if applicable).
- Check that your system for identifying and addressing complaints is operating effectively and be aware that the lodging of a complaint by a client, colleague, or opponent may be best addressed by internal case re-allocation.

What are Peer Reviewers finding?

“There was an effective system of file supervision and review, and supervisor’s comments were invariably acted upon within the time limit stipulated.”

“Although the complaint by the client Z was arguably undeserved, it was serious, and, if correct, raised serious doubt over the competence of the agent (at the police station). That it was neither properly acknowledged, nor investigated was unacceptable. It no doubt led to the client’s loss of confidence and the subsequent transfer of his instructions”.



“The overall impression was of a professional, motivated team working smoothly together. Work was delegated at various levels, but all under the effective leadership of S.L. It was reassuring to note that junior caseworkers knew he was available to give advice if needed. This was particularly evident on the file of P, where memos showed two colleagues receiving his help and guidance on (a difficult issue of disclosure).

“That there are clear unmet training needs was further demonstrated by the advice offered to the client (T), once he had admitted to the caseworker that

he had indeed assaulted his partner in the way alleged. The advice was that he must change his plea to one of guilty. This was both premature, and at best, incomplete. In particular, it failed to take into account the option of putting the prosecution to proof. This was an entirely legitimate tactic, given the client's certainty that she would not give evidence against him in court. This advice was in stark contrast to the correct and comprehensive advice offered to G which also forewarned the client of the potential witness summons/hearsay/special measures responses that might result."

"The caseworker then gave consideration to seeking to exclude the client's confession, under section 78 of the Police and Criminal Evidence Act 1984 and concluded "she was interviewed in the absence of legal advice and this is a breach of the Codes of Practice given the severity of the allegations being put and her vulnerability"; but this was simply not the case. He failed to recognise that there was no prospect of this argument succeeding. An appropriate adult had been present during the interview, the client had been asked whether she wanted a solicitor present, and there were no obvious instances of oppressive questioning during the course of the interview".

"... clear unmet training need was further demonstrated by the advice offered to the client (T)"

"The overall impression was of a professional, motivated team working smoothly together."

2. Are instructions taken in sufficient detail?

Why does this matter?

- Peer Reviewers frequently express Major Concern over the failure to take or record the client's instructions in sufficient detail.
- Instructions are the very building blocks without which we cannot represent our clients effectively.
- Informed advice cannot consistently be provided unless and until the client's full instructions are known.
- All too often clients and their witnesses do not help themselves and repeatedly fail to respond to invitations to make appointments.
- Perseverance, versatility and some degree of imagination are therefore essential qualities in obtaining sufficient instructions.

What might help us to get this right?

... At the Police Station

- Encourage caseworkers to be persistent and, where necessary, robust, in obtaining sufficient disclosure.
- Insist that a clear and contemporaneous note is made of the client's instructions. (It is accepted by Peer Reviewers that there are exceptional circumstances where this would not be in the client's interest. Where this is the case, and the reason is not otherwise apparent from a reading of the file, add a brief explanatory note)
- Help caseworkers achieve this by providing an appropriate prompt on a Police Station Pro forma.

... In Case Preparation

- Although adjournments are discouraged, urge caseworkers to be persistent and, where necessary, robust, in obtaining sufficient disclosure, either at the outset, or as soon as practicable thereafter to allow comprehensive instructions to be taken.



- Whenever possible review Initial Disclosure of the Prosecution Case (IDPC) in advance of the first hearing. This can enable informed instructions and advice to be taken and given promptly at or before the first hearing.
- Seek to obtain a sufficiently detailed note of initial instructions at the earliest reasonable opportunity, in particular, at the first court hearing.
- Consider all caseworkers, at the outset of each case, completing an ‘initial instructions’ form. (See generally chapter 7.)
- If using an “initial instructions form” ensure it contains appropriate prompts, e.g. for identifying admissions, denials, evidential leads (including potential witnesses), alibi evidence, health (especially mental health issues), character, welfare, and other ‘background’ issues, provocation, self-defence, and mitigating and extenuating circumstances.
- Encourage caseworkers to complete the form in a case-specific way.
- Instil in all caseworkers the importance of confirming client instructions. (A frequently recurring concern expressed by Crime Peer Reviewers is of the inadequacy of initial client correspondence (see Para 9 below). It is clear that they regard written confirmation of instructions as a fundamental tenet of good practice.)
- Where adequate instructions cannot be taken at the outset, ensure efforts are made to obtain them at the earliest opportunity.
- Foster a culture of keeping clients ‘in the loop’, listening to what they say, and clearly noting, and acting on their legitimate instructions and concerns. Placing the client at the centre of the case is likely to produce better instructions than where the client feels marginalised.
- Encourage caseworkers when practical to provide clients with copies of their IDPC, s.51 papers or pre-sentence reports for their comments.
- Ensure that clients are always asked if they are aware of any evidential leads not otherwise apparent from the papers on file. This is particularly important in ‘non-stranger’ allegations of sexual offences, where the alleged victim’s digitally stored data and social media communications may be vitally important.
- When clients intend to plead guilty, is sufficient effort made to identify any mitigating or extenuating factors?
- Encourage caseworkers to consider obtaining character witnesses or references, or letters or references where appropriate.

- In contested or Crown Court cases, ensure that a proof of evidence is taken as a matter of routine, and that the client is provided with a copy of it to allow them to check the content and amend it if necessary. It is good practice to ask a client to sign their proof of evidence. It is important that clients understand the nature of the document and how it will be used, record evidence explaining this.
- Make sure that caseworkers are aware that clients in custody need particular attention. They are unable to attend the provider's office, and there may be problems getting access to them because of pressures within the prison system. Early planning for prison appointments is essential.
- Consider taking instructions at court, via video-link or by telephone.
- Otherwise, offer bailed clients specific timed and dated appointments.
- If despite all the above a client fails to cooperate in providing their instructions, sufficient effort should be made to overcome this lack of cooperation including explaining the potential consequences. Warning clients that not providing instructions may have a detrimental effect on the outcome of their case and may result in funding being withdrawn may galvanise them into action.
 - Ensure that caseworkers understand the need to constantly review the adequacy/accuracy of the client's instructions as the case develops and further evidence is disclosed, and to seek further instructions as necessary.
 - Help them to do this consistently by the use of standardised attendance and court hearing forms and 'progress' letters which remind caseworkers of the need to review instructions and confirm in writing new developments and instructions.
 - If such follow up letters are not sent to the client (for example, due to the sensitivity of the case) the reasons should be recorded on the file.
 - Ensure that client concerns or complaints are addressed promptly.
 - If instructions disclose the existence of potential defence witnesses or other evidential leads, ensure that caseworkers are aware of the need to follow these up proactively. Do not leave this to be pursued by the client.
 - Ensure that witness statements taken from potential defence witnesses are signed and that a copy is provided to them.
 - Ensure caseworkers are adequately trained and resourced. (Failure to be proactive, or to seek witness summonses or necessary funding to instruct

suitable experts attracts negative comment in Crime Peer Reviews. See generally Chapter 8.)

- Not being proactive increases, the risk of failing to comply with time limits, sanctions and possible client prejudice.
 - Ensure that case advocates are fully aware of instructions, and that any requests by the advocate for further instructions are followed up. Where an in-house advocate not familiar with the case is used, Peer Reviewers will expect adequately recorded and updated instructions.
 - Are instructions clear on all attendance notes, particularly attendance notes for hearings?
 - Are comments from clients on evidence properly recorded, and cross-referenced to the prosecution papers?
- 
- Use file reviews to check:
 - That all contact with clients is recorded on attendance notes;
 - That clients are sent follow-up letters confirming instructions after each attendance;
 - That a sufficiently experienced fee earner has conducted and that junior fee earners are properly supervised.
 - Place any recent reports from recent cases on current files for reference.
 - Consider early referral to outside agencies for voluntary treatment where appropriate.
 - Consider obtaining information from clients in custody of their good behaviour in prison, including good disciplinary record, enhanced statement, studies, certificates etc. Such mitigating factors are capable of positively affecting case outcomes

What are Peer Reviewers finding?

“The Police Station attendance notes in the cases of ‘C’ and ‘D’ were of great concern in that it was not clear what if any instructions had been taken before interview under caution.”

“There was an overreliance on what the client had said in police interview as the basis of instructions. This ignored the obvious possibility that the client might have provided an account in interview that was not entirely in accordance with subsequent instructions.”

“Where one client contradicted himself in his police interviews this did not appear to be noted by the provider [U]. On another file no real effort was made to take the client’s full instructions between the commencement of the case and the plea and case management hearing. When the client changed her account dramatically on a number of occasions, this did not appear to ‘set the alarm bells ringing’ at all. This was a vulnerable and troubled client and it was particularly important that a determined effort be made to obtain and clearly note her settled instructions. Whilst a file note stated ‘typed copy of proof to follow’ no such proof was ever prepared [Y].”

... or ...

“It should also be remembered that the recording of such instructions (as contemporaneously as possible) can serve as much to protect the advisor as the client.”

“No thought was apparently ever given to obtaining evidence of good character where clients with no previous convictions or cautions stood trial or pleaded guilty to serious offences.”

“The provider did not routinely confirm in writing the initial instructions of the client. This was apparent from files such as R, A, and H. This is a fundamental requirement. It is important for both the client and the provider that there should be no room for misunderstanding, and the fact that this was overlooked repeatedly amounted to a serious concern..”

... on the other hand ...

“Instructions in contested cases were carefully noted in sufficient detail, as were the client’s observations on the prosecution statements where the case was sufficiently complex to warrant it. Indeed, it was this practice that appeared to lead to the exceptional outcome in the case of K, who was able to demonstrate that he had not arrived at the scene when the Crown witnesses T and C made their alleged observations.”

“It was pleasing to note that there was a useful practice of sending each client a copy of the initial attendance sheet, so there could be no misunderstanding as to the client’s instructions.”

“A proof of evidence was taken from the client in nearly all of the contested cases reviewed.”

“Where a case was contested, the firm routinely took clients’ comments on prosecution witness statements. This would of course assist any trial advocate with relevant cross examination of those witnesses.”

***“The Police Station attendance notes
in the cases of ‘C’ and ‘D’ were
of great concern.”***

3. Are clients receiving correct advice? Is the advice sufficient? Is it being delivered in a timely and appropriate manner?

Why does this matter?

- Advice to the client is regarded by Crime Peer Reviewers as the core indicator of quality. How well you deliver it is likely to determine your rating at Peer Review more than any other single issue.
- Clients who believe the advice they receive isn't right, is inadequate, or late, or who do not understand or remember it, will be more difficult to deal with.
- They are more likely to take wrong decisions and may blame you when things do not go as planned.
- Clients who receive late, weak or unrealistic advice on plea may lose credit when sentenced.
- Advice which is clearly wrong could damage your reputation and may attract professional sanctions.
- The advice issues that Peer Reviewers focus on most frequently can be broadly divided into the following six categories:
 - i How well advice is recorded or evidenced on file.
 - ii How effectively it is communicated to the client.
 - iii Whether advice is specific to the issues in each case.
 - iv The sufficiency of advice.
 - v The correctness of advice.
 - vi The timeliness of the advice.

3.1 Evidencing advice on file

- This is crucially important. Peer Reviewers will never be in a position to know exactly what you have said to your client in conference. They can only review advice that is actually evidenced on file.
- Peer Reviewers are themselves very experienced practitioners and very occasionally (e.g. from particularly favourable case outcomes) may feel able to draw inferences that clients have been well advised. More often, they find themselves unable to do this because of lack of evidence on file. If a favourable outcome has been achieved by a particular piece of advice, make sure this is clear from your file.
- Often, reviewers express frustration that they are unable to reward what they suspect has been good advice because of insufficient evidence of it

on file. Frustration that their good advice has not been recognised by the Reviewer is also the most frequently made representation by disappointed providers.

- Unless advice is evidenced the provider may have no defence to client complaints of poor, wrong, or insufficient advice.
- In firms where you work as a team, efficient recording of advice enables a colleague new to the file to quickly grasp the essentials. This is often referred to in Peer Reviews as the 'Pick-up' test. (See Chapter 6.)
- It is therefore essential that providers ensure that their caseworkers understand the importance of keeping a sufficiently detailed written record of the advice they give. This may more easily and consistently be achieved if caseworkers have a prompt, or series of prompts, reminding them at appropriate points in each case to ensure that advice has been recorded.

3.2 Communicating advice to the client

- The importance of evidencing on file that advice has been communicated appropriately to the client cannot be overstated. Peer Reviewers seem agreed that the most effective way of doing this is to confirm advice in writing. Failure to do this, especially at the outset of cases, is the single most commonly found 'Major Concern' in Crime Peer Reviews, particularly where there is evidence that clients have misunderstood, forgotten, or have otherwise been prejudiced as a consequence of this failing.
- 
- The image shows two individuals, likely caseworkers or legal advisors, seated at a light-colored table. They are both wearing patterned blouses. The person on the left is holding a pen and looking at a document, while the person on the right is also looking at the same document. There are several other papers and a folder on the table, suggesting a collaborative review or consultation session.
- Peer Reviewers frequently express concern that clients who plead not guilty where the prosecution evidence is clearly strong are not advised in writing or in sufficiently robust terms of the weakness of their position, and the consequences (e.g. loss of credit) of pursuing such cases to trial. They regard this as fundamental good practice and in the best interests of both client and provider alike.
 - Clients 'in denial' about the evidence of their guilt, even when correctly and firmly advised in conference may all too readily revert to their original

position afterwards or misconstrue what they have been told to suit their purpose. They are less likely to do so if they have the position spelt out in unambiguous terms in writing.

*“... no evidence that any of these
obvious problems were brought to
the attention of the client”*

3.3 Case Specific advice

- Providers who fail to tailor advice to the circumstances of the case are a cause of concern to Peer Reviewers.
- In particular, some of the most trenchant criticism in Peer Reviews has been reserved for “Client Care” letters which treat the client to a lengthy introduction to the provider’s practices, and an explanation of various aspects of the criminal justice system but contain no specific advice regarding the client’s case. Another frequent concern is failing to adapt standard paragraphs to the circumstances of that client’s case.
- Peer Reviewers often sense that this practice is symptomatic of a mechanistic approach to case preparation, perhaps superficially impressive, but where no care, thought or effort is given to addressing the real issues faced by the individual client.
- Significantly, providers that attract criticisms of this sort tend to receive Peer Review ratings on the low side.

*“... case-specific letter sent at the outset
in which instructions and advice
were accurately confirmed”*

3.4 Sufficiency of advice

- Peer Reviewers often express disappointment that advice, though correct, could have been more comprehensive. As practitioners themselves, Reviewers are acutely aware that there is a limit to what can reasonably be expected, so although this issue does not seem to be associated with poor ratings, it can make the difference between ratings of Threshold Competence (3) and Competence Plus (2).

- This problem frequently arises with advice on appeal, which is expressly covered by the terms of a legal representation order and on which all sentenced clients must be advised. An isolated failure to advise on the merits of an appeal, in a case where a successful appeal is unlikely, may not be a Major Concern, but is likely to be so where there is a routine or systemic failure to provide such advice. It would certainly be below competence or even a failure in performance not to advise on appealing against conviction following an unsuccessful trial, particularly where a client maintains their innocence.
- Peer Reviewers also expect more than just brief advice on the merits of appeal. Failures to advise on appeal deadline and the potential adverse consequences of an unsuccessful appeal in either the Crown Court or the Court of Appeal, have attracted adverse comments which could have been avoided by the provider's use of an appropriate standard paragraph covering such matters.
- Failure to advise clients in the Magistrates Court of their automatic right to appeal conviction also often attracts criticism.
- There is also an expectation that providers routinely remind clients in writing on the importance of such issues as:
 - i Answering bail;
 - ii Complying with bail conditions;
 - iii The consequences of failing to answer/comply;
 - iv The consequences of not attending for trial;
 - v Credit for an early guilty plea.
- Where providers have created and properly tailored standard paragraphs to advise on such issues, this has attracted positive comment.



3.5 The correctness of advice.

- Only the original caseworker will have a real awareness of such matters as the client's idiosyncrasies and local practices. Peer Reviewers are trained not to impose their own judgements unless certain that the advice has clearly been wrong. It is perhaps for this reason that Peer Reviewers are slow to criticise caseworkers for the judgements they make and concerns over incorrect advice are only expressed when the advice is clearly wrong. When they are made, they tend to be about Police Station work, and particularly on advice whether or not to give an account, or to submit a prepared statement, in interview. Reviewers also frequently see wrong advice on appeal time limits (for example 21 instead of 28 days, or vice-versa).
- Suspicion over the correctness of advice can often fuel other concerns over such issues as lack of supervision of inexperienced or junior colleagues, unmet training needs or a conclusion that a particular caseworker was 'out of their depth'.
- Reviewers have also expressed unease, rather than direct criticism, when they find Police Station work where every client in the sample gives an account, or all make no comment, or all make a prepared statement with no thought having apparently been given to alternatives.

3.6 The timeliness of advice

- Criminal Practice Rules and Protocols have intensified the pressure on the defence to be plea/trial ready as early as possible. Succinct and accurate advice to the client by the quickest practical means is increasingly noted as a Positive Finding.
- This same pressure occasionally leads to findings that advice has been given too early, e.g. before adequate disclosure has been made available.

“...acute concern that the client was left to pursue a defence fatally undermined by admissions she had made...”

What might help us to get this right?

- (See Chapter 2, Instructions) - In particular, ensure that from the beginning the skill and experience of the caseworker is matched to the complexity/seriousness of the case.
- It is again regarded by Crime Peer Reviewers as a fundamental tenet of good practice that at the outset, or as soon as it is feasible, the client is provided in writing with *tailored* and *case specific* advice on what are the issues in the case, and how they should be addressed.

- This should normally include advice on the elements of what has to be proved, plea, and venue.

In addition, there must be written advice on the strengths and weaknesses of the prosecution and defence case, likely sentence following conviction and other important matters that are relevant to the case.

- Where a client remains in denial in the face of a strong prosecution case, Peer Reviewers would expect to see evidence of candid and robust advice on the weakness of the proposed defence and the adverse consequences of pursuing it to conviction.
- Clients facing court proceedings should be given an indication of what sentence is to be expected following conviction. Such advice should not be overly broad or so vague as to be meaningless and should be tailored to the individual case and client. Accurate reliance upon the relevant (if any) Sentencing Guidelines is welcomed and routinely attracts favourable comment in reviews. Advice should extend to possible ancillary orders.
- Where cases are adjourned for sentence following conviction, ensure that caseworkers are proactively considering mitigating or extenuating information, including, where appropriate, obtaining character references.
- Collate information (from internal file reviews, client feedback forms, complaints, issues arising from case plan meetings, etc ...) to identify any training needs for caseworkers and see that those needs are addressed.
- Ensure caseworkers have access to legal resources and are properly supported (See chapter 6).
- Foster a culture of co-operation, so that junior colleagues can turn to more senior ones for advice and guidance.
- Satisfy yourself that documentation and standard letters contain sufficient prompts to ensure the above requirements are met, and that ongoing standard attendance forms, court attendance forms and progress letters prompt caseworkers to keep under review the accuracy and relevance of advice previously offered. (See generally Chapter 7).
- Encourage clients to seek clarification of advice they do not understand, both from the provider and/or from counsel in conference or at court.
- Satisfy yourself that clients are accurately and fully advised of case outcomes, and that they understand the significance of sentences that are not self-explanatory, and where relevant the potential consequences of breach of sentence.

- Ensure caseworkers routinely confirm appeal advice to all convicted clients in relation to sentence, and advice in relation to appeal against conviction for all clients convicted at trial.
- You may wish to facilitate compliance with many of these advice requirements by the use of appropriate prompts or standard paragraphs. Care must be taken to ensure that standard paragraphs are relevant to the circumstances of a particular case. Warnings on such matters as bail compliance, the consequences of breaching bail or not attending for trial, and aspects of appeal advice (such as time limits) all lend themselves to this practice.
- Ensure that advice is sufficiently reasoned and there is a record that the client has been told of the reasoning behind the advice, especially where advice on the face of it might be regarded as unusual or unexpected. The advice is best confirmed in writing.
- Finally, stress the importance of timeliness of advice. Set performance standards for the early confirmation of advice by letter, and where these are shown on file review to be missed, establish the reason, (e.g. inadequate typing support) and address it.



... and ...

"It was a matter of the most acute concern that the vulnerable client M was left to enter and then pursue to trial a defence which was always fatally undermined by admissions she had made in her second police interview. This concern was heightened by the fact that if proven, the second Racially Aggravated allegation was likely to attract a custodial sentence. Although the weakness of the defence and the likely sentence were noted in memos, there is no evidence that these concerns and the potential loss of credit were ever made clear to the client."

What are Peer Reviewers finding?

The following extracts from reports are typical ...

"Although there was evidence that the strength of the prosecution case had been analysed, this was not communicated to the client who was left to pursue a hopeless defence right up until the day of trial."

"With rare exceptions [B] there was a systemic failure to provide clients with clear advice on the strength of the prosecution case against them. This was of particular concern where the evidence appeared strong."

"There was no evidence on the serious cases of ST (and linked file) that this client was ever given proper written or oral advice as to likely sentence, the Definitive Sentencing Guidelines or the Dangerousness Criteria."

"The provider failed to recognise the clear and obvious strengths of the prosecution case. In particular the statements of the two complainants and five other witnesses, two of whom were police officers, and the continuity of evidence from assault to arrest appeared to fatally undermine the defence of mistaken identity. Since in interview the client had said he could not remember what happened it was difficult to see how he could have been acquitted at trial. There was no evidence on file that any of these obvious problems were brought to the attention of the client, who pleaded guilty on the morning of trial on a full facts basis (C)."

- Conversely, Peer Reviewers see positive aspects of timely and appropriate confirmation of advice. Quotes from recent Reviews included the following remarks:

"An early, well composed case-specific letter was sent to the client at the outset of each case in which the instructions and advice were accurately confirmed, the strengths and weaknesses assessed, and setting out what the client and caseworker each needed to do to bring about the best result. This provided early reassurance to clients that the issues had been grasped and the case was in good hands."

- Peer Reviewers expect files to pass the 'Pick-up' test, especially at those providers where caseworkers are expected to work on each other's files:

"Although there was little caseworker continuity at this provider, advice given was clearly, promptly and succinctly summarised in letters, so that each successive caseworker could readily ascertain the advice that had previously been given by colleagues."

"Advice given was always confirmed in writing so that clients had a more permanent record of what they had been told in conference."

*"... advice given was clearly,
promptly and succinctly
summarised in letters ..."*

4. Is all work done that needs to be done?

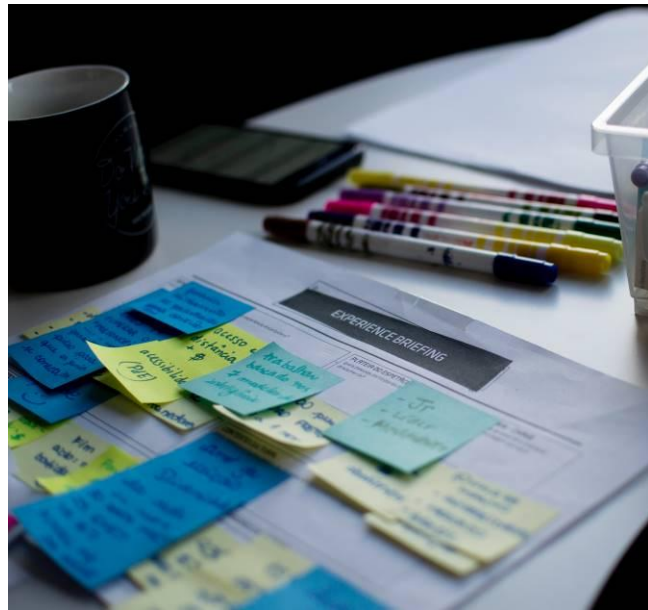
Why does this matter?

- Peer Reviewers frequently express concern that cases, especially contested and Crown Court cases, are not prepared in sufficient detail.
- Correct and informed decisions on such crucial issues as advice on plea, and the evidence to be called can only be taken once the 'groundwork' has been done.
- A lack of sufficiently detailed instructions or analysis of the evidence against the client may lead to wrong or inappropriate advice.
- Once a case proceeds to the Crown Court, this should not be regarded as an opportunity to delegate all remaining work to Counsel. In Crown Court cases the client, caseworker, in-house advocate, or (if instructed) junior and leading counsel should be working as a team with good lines of communication and information sharing, and an understanding of the part each has to play to bring about the best achievable outcome.
- Good outcomes bring not only job satisfaction, but are the surest safeguards of reputation, client satisfaction and further instruction/recommendation.

What might help us to get this right?

- (See Chapter 2 Instructions.)
- In particular, ensure that in all contested cases, caseworkers are aware of the importance of the client agreeing and signing a proof of evidence. In its final form, this should include, where necessary, the client's comments on those parts of the prosecution evidence that are not accepted.
- Ensure that caseworkers are prompted to ask the client about potential defence witnesses, that such witnesses are contacted and spoken with, and any that are to be called to give evidence have been provided with their signed proof.
- Ensure that caseworkers are prompted to ask the client whether they are aware of potentially relevant evidence, including video evidence and digitally stored/transmitted material, in the possession of any potential prosecution or defence witnesses or other third parties.

- Draft a preliminary hearing checklist.
- Consider using a flow chart or pro forma 'tool' to analyse evidence.
- Is there evidence on attendance notes of sufficiently detailed consideration and analysis of the prosecution evidence? Peer Reviewers often comment adversely on notes recording that considerable amounts of time have been spent considering prosecution evidence but with no record of what this achieved, what conclusions were drawn nor any resultant action or advice.
- Have the strengths and weaknesses of the prosecution and defence cases been correctly identified? Have conclusions been drawn?
- Have these conclusions been conveyed to the client and confirmed in writing in language appropriate to their level of understanding?(See chapter 9 Communication, and chapter 3 Advice.)
- Has there then been proper consideration and discussion with the client on key issues such as plea and venue?
- Have the decisions reached been confirmed in writing to the client, so that the caseworker and client each have a clear understanding of what each needs to do?
- Consider preparing a timetabled 'to do' list, or in more demanding cases, a case plan appropriate to the seriousness and complexity of the case.
- Caseworkers should consider whether this should include for example, the following:
 - Further proofs of evidence, such as 'background' proofs of issues that may not be apparent from the prosecution papers, or those dealing exclusively with mitigation.
 - Statements from all available witnesses, including 'character' evidence, and steps to compel the attendance of reluctant witnesses.
 - Crime scene visits and photographs.
 - The contents of the defence statement.



- Analysis of unused material and appropriate further disclosure action, including where necessary steps to compel third party disclosure.
 - Applications to oppose/admit bad character or hearsay evidence and special measures.
- Are briefs comprehensive and detailed? Do they contain analysis of the relative strengths and weaknesses of the case? Consider producing a standard format brief with sub-headings. Instruct Counsel to consider whether any enquiries are necessary and if so, to advise in writing as soon as possible.
 - Ensure that chambers' senior clerks and Counsel are aware that timely and adequate communication is essential if they expect to be instructed again. (Some providers enter into more formal "service level agreements" with chambers.)
 - Ensure conferences are timely and sufficiently documented. If appropriate, draft an agreed "to do list". Confirm the outcome in writing to the client.
 - Ensure adequate liaison with Counsel. If there are changes of Counsel, is there notice given or explanation for the change?
 - Is the choice of Counsel appropriate to the case and the client? Has the client been consulted in relation to the selection of their advocate and been given information about them? (Standard Crime Contract 7.3).
 - Reviewers are aware of the impact of funding constraints and that advocacy support cannot be provided throughout every Crown Court hearing. However, on some occasions it may be necessary. Where the client is clearly vulnerable, or the case serious or complex, failure to provide support can be regarded as a concern. It is good practice on these cases to record on file that this issue has been considered, and a brief reason for the decision on whether or not to provide support.

***"In cases ... for trial there was good evidence
of attention to detail and
clear preparation ..."***

What are Peer Reviewers finding?

"It was clear that the caseworker had carefully considered and recognised the significance of this aspect of the prosecution case. There was a detailed note which cross-referenced it to the client's account, relevant case-law had been downloaded, the Home Office Guidance on the use of C.S. had been obtained, and it had all been provided to Counsel in a most informative brief."

"The firm was proactive in researching clients' cases. In the case of C the defendant was involved in an incident with his boss on work premises. The

defendant was charged with an offence under the Public Order Act. The case was listed for trial. The solicitor attended the factory premises together with the defendant to ascertain the position regarding the existence of the CCTV cameras.”

“On the file of AB the provider took proactive steps at an early stage of the case to secure evidence to support the client's case and drafted a detailed letter of representation to the prosecution resulting in the case being discontinued. On the file of CD the provider secured a number of witness statements to support the client's defence and after conviction a letter from the client's GP which was beneficial to the client at sentence. On the file of EF the provider resisted attempts by the prosecution to have inadequate evidence agreed prior to trial, resulting in the charge being discontinued.”

“ Where there was the opportunity to support the client's case with independent corroborating evidence, that opportunity was not seized with worrying regularity, [eg GH where expert medical evidence would have been of use to the client's case].”

“Again, on the file of P, there was a note which read ‘R.R., considering A.D. and Unused – 23 units.’... However, as on previous files there was no evidence of what this ‘consideration’ amounted to, nor of any analysis, nor of any conclusions being drawn, nor of any action being taken as a result, nor of any advice being given to the client ... In fact no ‘end result’ at all.”

... and ...

“Although 90 mins was claimed for an ‘analysis of the prosecution statements’, the note amounted to no more than just a verbatim recital of the content of those statements.”



... on the other hand, evidence of analysis and consequent action will be regarded as a Positive finding ...

“In cases which had been prepared for trial there was good evidence of attention to detail and clear preparation. In the file of H.B. the Provider identified from the unused material that a prosecution witness appeared to be ‘known to the police’, and that there was a potential uninterviewed defence witness. They not only responded to a Prosecution Bad Character Application with their own application to exclude bad character

evidence but went on to submit their own application to put in the bad character of the non-Defendant.”

“The witness for the Defendant was traced and a statement was taken and served Section 9 upon the CPS (who agreed the evidence).”

“In the case of S.M. in preparing for trial, the fee earner had carefully listened to a 999 call tape and lengthy interview tapes because she went on to take issue with the CPS as to the interview record which had merely been prepared as an SDN rather than a full ROTI pointing out that this was insufficient for trial purposes.”

" On none of the files which proceeded to the Crown Court had the Provider sent a representative other than Counsel. This appeared to be the case notwithstanding that at least one of those clients was vulnerable. The file of G related to a client who was clearly suffering from a mental health condition and on whom the Provider had obtained psychiatric reports. Notwithstanding the personal circumstances of the client, nobody had attended upon him. Whilst the attendance of a solicitor or solicitor's representative at the Crown Court is not compulsory, it is appropriate in certain circumstances, one of those being when a client has a mental health condition and/or is vulnerable."

*“... there was no evidence of any analysis,
nor of any action being taken ...”*

5. Are ethical and professional standards of conduct being maintained?

Why does this matter?

- Crime Peer Reviewers are all experienced practitioners. As part of their selection process, their own work has been Peer Reviewed and found to be of a good standard. They attach importance to ethical considerations and a professional approach. When they find grounds for concern of this sort in a file sample, it tends to have a serious impact on the rating awarded.
- Failing to recognise and address conflicts of interest and other ethical issues is not just unprofessional; it can seriously prejudice the client's case.
- A weakness in procedures for dealing with conflicts and other ethical issues may result in having to refer the client to another provider at an advanced stage in the proceedings.
- Lack of professionalism, especially failure to comply with the Criminal Procedure Rules and work toward the overriding objective, can prejudice the client's case.
- Although Peer Reviews are not cost audits, Reviewers are solicitors who may report apparently serious misconduct to the Legal Aid Agency and the Solicitors Regulation Authority.
- Peer Reviewers understand how challenging the current funding provisions are, but their Reports may include reference to inflated claims for costs. Where there is a pattern of such claims in a file sample it could amount to a Concern. Whilst the individual client may not be prejudiced undue claims against the legal aid fund prejudice all clients.



What might help us to get this right?

- Ensure that your procedures for reporting, addressing and resolving conflicts of interest and other ethical issues are sufficiently robust and adequately documented.

- To facilitate this, consider introducing a standard conflict referral form with prompts for identifying, referring and resolving the conflict or ethical issue in question.
- Ensure that caseworkers are familiar with these procedures and trained to recognise the sort of situations that might arise. Providers should bear in mind that as experienced practitioners, Reviewers are unlikely to be 'taken in' by subterfuges sometimes adopted in order to retain a case/client where the proper course of action would be to cease to act.
- Ensure caseworkers have access to and are familiar with the appropriate guidance on how to identify and deal with conflicts of interest.
- Ensure in particular that supervisors, the money laundering reporting officer, and others tasked with monitoring ethical issues are familiar with guidance and have a good understanding of appropriate legislation such as that relating to the proceeds of crime.
- Depending on the size and resources of your organisation, you may wish to appoint a senior colleague to the role of Ethics Monitor, to whom caseworkers can refer their concerns.
- Encourage caseworkers to address such situations as soon as they are aware of them, even if that is simply by talking up the concern with a senior colleague, supervisor or monitor.
- You may wish to review the structure of any bonus or incentive schemes. Do they place too great an emphasis on profit at the expense of principle?
- What details are being used to conduct conflict checks? Are they sufficient? Are conflict checks performed at all relevant stages of the case including when additional witness evidence is served?
- Are caseworkers sufficiently aware of the importance of timely compliance with court orders and undertakings? Insist that time limits for the service of defence statements and other important documents are met by ensuring files contain appropriate prompts and that they are diarised.
- Aspects of professionalism such as punctuality, restraint and courteousness, should not need formally addressing, but when there are lapses, or appropriate standards are not being maintained, make it clear what is expected.
- Be very careful if you decide to re-cycle and re-use paper from old files. Although ecologically sound, it is highly unprofessional to re-use scraps of paper which have confidential information about the affairs of other clients on the reverse. If these files are seen by, or have to be passed to third parties, it is inevitable that the duty of client confidence will be breached.

- On this point, there is a consensus amongst Reviewers that it is a breach of confidence to routinely 'copy in' to correspondence the carer of a young or vulnerable client without consent. .
- The Crime Contract para 6.6 prohibits gifts to clients or potential clients.
- Domestic Violence cases seem to be a fertile ground for other ethical issues identified by Peer Reviewers. In particular, difficulties arise over the extent to which caseworkers can/should become involved in the process of victim retraction statements, especially when the defendant client is subject to the usual all-embracing bail conditions. Consider developing a written protocol for dealing with this and other sensitive issues, and ensure all caseworkers are aware of it and are consistently observing it.

What are Peer Reviewers finding?

"It was the cause of the most acute concern that (the firm) continued to act on behalf of both C and M, despite C having clearly incriminated M in her Police Station interview. That separate counsel were instructed heightened rather than lessened the concern because it showed that (the firm) were aware of the problem. As a result, the service provided to M fell far below that which users of the Criminal Defence Service are entitled to expect."

"There was a practice throughout the files of writing on the back of old case papers, including a photocopy of another client's draft will, prosecution papers from other cases and even, on one file, (F), a paper listing bank account details. This showed a complete disregard for normal principles of confidentiality."

"... although consent from the child client could be inferred in some cases, in others it could not. For instance, it is clear from the P.S.R. in the case of M that she had a difficult relationship with her mother, who should certainly not have been sent copies of correspondence."

"The preparation notes on magistrates' court files where higher fees can be claimed were in sharp contrast to the lack of notes for preparation on Crown Court files where there are fixed fees. On the file of XY a higher standard guilty plea fee was claimed for a case in which the provider became involved after a guilty plea had already been entered. The fee earners claimed considerable preparation time including 30 mins for preparation of a letter that was little over one page, and 12 minutes for looking at a letter that was returned by the post office."

" Although there is a conflict check prompt on the file cover, caseworkers often failed to complete it, even where the potential for conflict was significant, as in the domestic violence case of G.J."



...and...

“The conflict checks, although carried out, were pointless for Criminal Cases, since they were only carried out against the opponent, who in every case was described as ‘the police’. ”

- On the other hand, evidence of a system actually working (in the sense that a conflict has been identified, and the client asked to seek other representation), can be regarded by Reviewers as a significant ‘Positive’.

“It was reassuring to note that when the Defendant G in conference with counsel, at a late stage in the case, sought to advance a somewhat different line of defence to that which had been put forward on his behalf in the Defence Case Statement, he was immediately advised that if he persisted, he would need to seek different representation.”

“The client whilst remanded in prison custody went on to request money from the solicitor. An extremely difficult client was handled with a great deal of professionalism by the solicitor (L).”

***“Although there is a conflict
check prompt, caseworkers often failed to
complete it ...”***

6. Are you satisfied that caseworkers have the tools to do the job?

Why does this matter?

- Peer Reviewers comment that concerns arise because caseworkers are let down by poor systems of working, inadequate support, or insufficient training and resources.
- Caseworkers having to cope with pressures of this sort will not be able to consistently produce the work they are capable of and may become demoralised.
- Whilst there is no substitute for hard work and talent, good systems of working can help to raise standards and promote consistency.

What might help us to get this right?

- Make the best use of generic material such as file covers, standard letters/paragraphs and forms. Ensure that they are 'user friendly', relevant and kept up to date (and see Chapter 7 below).
- Ensure that caseworkers have access to all necessary legal sources, whether physical or online, and that these are kept updated.
- Ensure Law Society training requirements are met, and that if caseworkers have further training needs they are identified and addressed.
- Ensure that there are adequate support workers for typing, filing and other administrative tasks, or that if caseworkers are required to perform these functions they have sufficient time in which to complete them.
- Hold regular 'brainstorming' sessions where caseworkers and support workers can voice concerns or make suggestions for improvements to working practices.
- Drive up standards by actively promoting good practice. Collect examples of these (e.g. well-drafted defence statements) and copy colleagues into them. Make sure good practice filters down by encouraging supervisors and more senior and able colleagues to share their best work.
- Encourage caseworkers to keep and access examples of good practice, relevant case law and practice directions, and other useful legal material.
- Do files pass the 'pick up' test so that a colleague working on an unfamiliar file finds it easy to ascertain the current position? Comments on good file maintenance and management are a common 'Positive Finding' in Crime Peer Reviews and are regarded as an element of the quality agenda.

“Caseworkers clearly had access to a comprehensive electronic database of case law...”

What are Peer Reviewers finding?

- Peer reviewers often justify their findings by reference to the ‘pick-up’ test, e.g:

“Files were divided into coloured segments for correspondence, prosecution papers, and funding papers. Court attendance sheets and attendance notes were likewise colour coded and usually typed. Correspondence was sequential and well expressed. All this would have enabled successive caseworkers on picking up the file to tell at a glance the present position and advance the case in the most effective way.”

... and ...

“There was an impressive selection of well-drafted generic documents and standard paragraphs. Pro formas, such as the Police Station one, all had a suitable series of prompts. All of this combined to provide caseworkers with a most effective platform on which to produce work of a consistently high standard.”

“Caseworkers clearly had access to a comprehensive electronic database of case law. In the case of L, this enabled (a named caseworker) to download the relevant decided cases and furnish them to the prosecutor. It would be reasonable to infer that the subsequent discontinuance was due in no small measure to this step.”

“The case also evidenced the firm’s use of Information Technology. The solicitor used the LexisNexis facility to research the relevant case law.”

... but ...

“It was of great concern that in such a serious and demanding case, (indecent images of children), W. was advised right up to the plea and case management hearing without reference to the leading case of Oliver. (The caseworker) was apparently completely unaware of it, and its fatal consequences for the client’s unrealistic stance on the material, until it was drawn to his attention by Counsel.”

Without reference to the leading case ...”

7. Are you making sufficient use of Prompts, templates, pro formas and other generic material?

Why does it matter?

- Peer Reviewers recognise that quality of service can be achieved by various routes and that a system that works well at one provider might not be appropriate for another. However, in a significant number of reports, Reviewers see the failure to create and use standardised materials as an 'Area for Development' or 'Suggestions for Improvement'.
- By reducing the risk of something being overlooked they promote consistency.
- By ensuring that information is always recorded fully, and in the same way in every case, they help your files to pass the 'pick-up' test (see chapter 6). This is particularly important at providers where a number of different caseworkers can be working on the same file.
- They should help caseworkers to work more efficiently as they undoubtedly save time.

What might help us to get this right?

- Decide with caseworkers what documents or procedures might lend themselves to this process.
- Examples quoted by Reviewers include:
 - A template or standard series of prompts for what should be included in:
 - Your initial "case letter";
 - A Police Station booklet/pro forma;
 - An Initial Attendance and Advice form;
 - Your initial client letter, and also your outcome letter;
 - 'Progress' letters to clients;
 - Instructions to counsel;
 - Crown Court bail application forms;
 - A defence statement;
 - Applications to Admit/Exclude Bad Character Evidence, Special Measures Evidence, Hearsay Evidence etc;
 - Appraisal forms for Counsel and other third-party agents.
 - A template or standard series of prompts for what should be covered in your court attendance form.

- A standard paragraph to clients regarding:
 - Bail;
 - Attending trial;
 - Credit for guilty plea;
 - Either way cases;
 - Strength of evidence;
 - Likely sentence;
 - Appeal advice.
- Some providers create their own material or come by it in training manuals or other literature. Others prefer to adapt material which they may have seen on other providers' files, or on websites such as that of the Public Defender Service (PDS).
- If you decide to create your own material, it is important to pay close attention to the relevant primary legislation, rules and regulations. Not only should this ensure accuracy, but it will also often provide the wording for the prompt you require. For instance, all the important prompts for a defence statement can be gleaned from the relevant legislation.
- Whichever source you use, ensure that the prompts are relevant and cover all salient issues, but resist the temptation to address every conceivable eventuality in detail. Peer Reviewers frequently express concern that pro formas, especially Police Station booklets, are not always completed properly or fully. Often this is because they are too long and require caseworkers to record unnecessary information. Even when completed such forms are so time consuming, they defeat their object.
- Take care over the layout and design. In particular, provide sufficient space for the caseworker to fill in the response to the prompt, and encourage those making manuscript notes to also take care in how they are made. Poor, illegible or inadequate file notes often attract adverse comment in Peer Review. Insist on an acceptable standard of note keeping and information recording, and that if manuscript notes are not legible, they are typed out.



- Encourage the efficient use of third parties such as Counsel, agents and experts by maintaining and regularly updating a list of approved personnel. Encourage caseworkers to give feedback over the performance of third parties, so that poor performers do not continue to receive instructions.

What are Peer Reviewers finding?

“ Whilst file supervision and review pro formas were seen on a number of files, they were either not completed, or completely ineffective, in that work was ‘ticked’ as having been done when it clearly hadn’t.”

“Whilst the Police Station Booklet contained all the necessary prompts, there was insufficient space left for caseworkers to enter a response. The ‘Disclosure’, ‘Client’s instructions’ and ‘Advice’ fields would only accommodate a sentence or two at most, so that these important notes spilled over randomly on to margins or other scraps of paper.”

- Regularly review your standard material to ensure that it is kept up to date and fit for purpose, especially when new rules or regulations are introduced. Do not make the mistake of over elaboration, by introducing eye catching but entirely superfluous and irrelevant ‘frills’ in the belief this will be mistaken by a Peer Reviewer for genuine quality.
- One Reviewer described such a sample of files as: “... *A triumph of form over substance*”.

But on the other hand ...

“All files reviewed were well ordered and organised. Each file contained a Client Details form stapled to the outer leaf of the folder containing contact details, matter details, welfare benefits check, conflict check, file identification and case worker. As cases progressed, it was clear that caseworkers had a selection of well-designed pro formas to assist in the recording of information, and this provided a platform for the production of consistently high quality work. At the end of the case, a File Closure form was used to close the file and provide a check list as to reasons why the file was closed, final transactions with the client and costs.”

“over substance”

8. Are caseworkers sufficiently proactive, particularly in seeking disclosure and pursuing the alternative disposal of cases?

Why does it matter?

- It is clear from their reports that Peer Reviewers appreciate and are keen to reward providers who 'go the extra mile' by demonstrating proactivity and persistence in furthering their client's interests during the course of a case. This includes the dogged pursuit of the prosecution for relevant disclosure in the face of bald and automatic assertions that the defence are not so entitled, including court applications where necessary.
- Applications to adduce trial evidence of hearsay or bad character, or for special measures for defence witnesses, are also likely to be regarded by Reviewers as indicative of good quality work, as would opposition to such applications made by the prosecution.
- In a significant number of reports rated as Excellent, reviewers have identified outstanding work in pursuing prosecution disclosure.
- The growth in digitally stored and transmitted data, especially posts on social media platforms, provide proactive caseworkers with opportunities to further the client's case and to undermine the prosecutions.
- Achieving the early disposal of a case on a basis which is favourable to the client is an important key indicator of quality.
- It brings job satisfaction and enhances your reputation with clients and potential clients.
- It spares the client the anxiety and uncertainty of a trial.
- Recent steps taken to promote speedier justice, such as communication by secure email, show time is now of the essence and lack of proactivity no longer an option.

What might help us to get this right?

- Ensure that training needs are met, particularly with regard to such matters as:
 - The disclosure procedures;
 - Contested bail procedures;
 - Provisions for admitting/excluding hearsay evidence;

- Procedures for admitting/excluding evidence of bad character;
 - Advocacy;
 - Procedures for compelling the attendance of witnesses;
 - Evidence to be given with Special Measures.
- Are caseworkers confident in taking these and other proactive steps, and putting their arguments persuasively and vigorously?
 - Although professionalism and a degree of co-operation with other agencies in the Criminal Justice system are essential, ours is an adversarial system. Whilst tactful persuasion will often be the correct approach, acting in the best interests of the client will often require a degree of single mindedness and persistence.
 - It is essential that caseworkers are aware of the range of diversionary and alternative disposals available to the defence.
 - Ensure that the option of an alternative disposal is considered early and throughout the case by including appropriate prompts in your pro formas. For instance, the Police Station booklet could prompt caseworkers to consider and discuss the possibility of Caution or other forms of pre-charge diversion. The 'Initial Instruction' and 'Court Attendance' forms could include a 'Consider Alternative Disposal' prompt.
 - Encourage caseworkers to have a proactive approach to the Crown Prosecution Service , and ensure that efforts at out of court disposals and "plea bargains" are noted on file.
 - Show the client that you are robustly arguing the case by confirming in writing and explaining any proactive steps you take. Whilst criminal defence lawyers usually need no invitation to 'showboat', it is important for the morale of clients to know you are firmly on their side. At least one reviewer has been prepared to infer good advocacy at fought bail applications and at trial from the self-congratulatory descriptions of the hearings as summarised in client correspondence!)
 - Providers should also bear in mind that letters may be the only way you can record and demonstrate good work that might otherwise be missed by a Peer Review.

*“...there was no enthusiasm
for giving cases the attention
they deserved.”*



What are Peer Reviewers finding?

"Case of T.H. - Quite properly, the caseworker made oral representations on behalf of the client to the custody sergeant which resulted in no further interviews with the client taking place."

"Equally impressive was B.D. - where written representations were made by the provider to the Crown Prosecution Service regarding discontinuance of allegations of common assault and harassment which had been made against the client by an ex-girlfriend. These representations resulted in the proceedings being discontinued by notice."

"On a number of files, the provider took proactive steps to assist the client. It was clear from the file of R that the provider made persistent attempts to secure a bail address for the client and took immediate steps to obtain the client's release from custody when the case was discontinued. On behalf of the client V, the provider made considerable effort to seek accommodation and a bail address, with regular contact with family members for that purpose. A proactive and detailed approach was made to the CPS on the file of M to raise issues regarding the evidence due to be adduced at trial."

"Defence case statements were drafted in-house [B,D]. Steps were taken to obtain a statement from a prospective defence witness [C]. Written representations were made on some files to persuade the prosecutor to discontinue proceedings [O.G]. Good efforts were made on one file to persuade the prosecution not to rely on a victim impact statement on sentencing [K]."

... but ...

"On the file of (O) there was no activity and indeed no letter until the client was written to in November asking her to make an appointment to give instructions '... before or immediately after Christmas and certainly before the trial date of 7th January'. These examples demonstrated at the very least a lack of proactivity in taking instructions and would have left the clients with the impression that there was no enthusiasm for giving their cases the attention they deserved."

"On the file of K virtually nothing was done on the Magistrates Court file at all. No proof or mitigation proof was taken and, although there was a clear indication from the client that there was likely to be a guilty plea, but on a quite favourable basis which was different from the way the prosecution put its case, there was no attempt to formalise that basis or to try to agree it with the CPS. The failure to start preparation in the Magistrates Court was also noted on the files of G., F., and P, and this could have had potentially damaging consequences for the clients."

"Bizarrely on file UV a short statement was taken from a defence witness by telephone but no apparent effort was made to obtain instructions from the client who was in the next room to the witness at the time!"

***"These representations resulted in the
proceedings being discontinued ..."***

9. Could communications skills be improved?

Why does it matter?

- Persuasiveness, empathy, and good interpersonal skills in general are the hallmarks of a good criminal lawyer and are recognised by Peer Reviewers as essential ingredients of a quality service.
- It is therefore perhaps a significant limitation of Peer Review that Reviewers are unable to see the provider advocating or dealing face to face with clients. For this reason, they pay particular attention to what evidence there is on file of the provider's communication skills, people handling skills, and powers of persuasion.
- The nearest 'proxy' we have to judging communication skills first hand is to look at how matters are expressed in correspondence. Not surprisingly findings based on quality of correspondence, especially with clients, are frequently found in reports.
- Clients who are in trouble are often going to be anxious, angry, fearful and in denial. They will respond much better to a caseworker who shows understanding of their concerns. By putting clients as far as possible at their ease, they should be easier to handle, give better instructions, and more readily accept advice.

What might help us to get this right?

- Ensure caseworkers always confirm advice in writing. Failure to confirm advice in writing, especially at the outset of cases, is a commonly found Major Concern in Crime Peer Reviews, especially where there is evidence that clients have misunderstood, forgotten, or been otherwise prejudiced as a consequence.



- Are caseworkers aware of the importance of making early contact with clients who are in police custody? Early telephone advice is necessary when the provider is not already at or adjacent to the police station. This reassures clients, especially those who are vulnerable or in custody for the first time, and provides the opportunity to check on their welfare, advise them of their rights, and in particular to ensure that they are advised not to discuss the allegations with the police until a legal representative has attended. Note the Crime Contract Specification 9.23 onwards.

- Do your caseworkers give realistic advice on plea? In particular, Peer Reviewers frequently express concern that clients intending to plead not guilty where the evidence is strong are not advised in writing in sufficiently robust terms of the weakness of their position, and the consequences, in terms of loss of credit, of pursuing cases to trial or changing their pleas at too late a stage.
- Conversely, Reviewers will praise timely and appropriate confirmation of advice in writing. Stress the importance of always confirming advice in writing at the first opportunity after it has been given.
- Is correspondence “user friendly”? Correspondence to the client which is not appropriate to the client’s level of understanding, or overuse of jargon, often attracts adverse comment.
- Ensure that caseworkers check correspondence before it goes out. It is apparent from the wide range of comments found in reviews that the quality of correspondence varies from excellent to barely literate. There is sometimes frustration that some caseworkers do not check correspondence before it is sent to the client, which can result in a file sample in which most correspondence was described by the reviewer as “*incomprehensible*”.
- Where used, are your support staff up to the job? Reviewers appreciate the difficulties in retaining suitable support staff, and that time spent checking correspondence may not be cost effective but clearly believe that clients are entitled to expect correspondence they can read and understand.
- Are letters sent out promptly? Untimely correspondence regularly appears as a Concern in Peer Reviews, but unless persistent and serious, rarely amounts to a Major Concern. Where late letters cause prejudice, not surprisingly, it usually will amount to a Major Concern. The most common examples of these are letters advising on appeal that the client would not receive until the expiry of the time limit, and letters advising of forthcoming hearings sent after the event.
- Whilst there is no definition of what constitutes ‘untimely’, letters to the client later than seven days following the event, begin to attract adverse comment. Where letters cannot be sent out immediately ensure the work is done within an acceptable time frame. Seven days is recommended.
- Ensure that letters to the client are case-specific and sufficiently detailed, by providing examples of good practice to less experienced caseworkers.

- If you do wish to include both generic and case specific material in the same correspondence, then do not overlook the need to tailor the content to the needs of the specific case.
- When caseworkers go out of their way for clients, it is good practice to ensure that it is noted on file. Even though this work may be outside the confines of the current contractual regime, and therefore not chargeable, this will be the only way you can inform a Peer Reviewer that such steps have been taken. When Peer Reviewers see evidence of empathy and 'going the extra mile' they often comment positively about it.
- Most important of all, ensure that young or vulnerable clients, and those with poor mental health, are dealt with appropriately. Provide training in recognising mental health issues, particularly fitness to answer questions and to plead, and the use of experts. Are caseworkers aware of the different evidential and sentencing options that may be engaged by the seriously mentally ill? Are they alive to the diversionary options, and the mitigating and extenuating possibilities that may be presented?

What are Peer Reviewers finding?

Quotes from recent Reviews included the following remarks:

"Communication was the real strength of this firm. Letters managed to be both detailed and accessible. Language was simple and clear. The level of advice was high, carefully expressed and almost invariably correct."

"There can be no better example of the empathy and support shown to clients throughout this sample than the case of (D). He had written to (the caseworker) from prison to say he would change his plea to guilty 'just to get it over with'. He received a same day reply explaining that he should only do so if he was guilty, with an encouraging and correct summary of the strength of his proposed defence. He accepted this advice, which was borne out by his subsequent acquittal."

"The care shown for their clients could almost be described as 'pastoral'. They shared their clients' concerns, and took pleasure in their successes. The offer of a lift to court for the elderly N, the sympathy expressed to F following the death of his mother, and the signposting on of G for help with his financial problems, were all examples of the excellence of, and importance attached to, the strength of the solicitor/client relationship at this provider".

"The description of the client H, in an open letter to the Crown Prosecution service, as '... not the sharpest knife in the drawer', initially caused this reviewer some concern. However, it proved to be fair, and, more importantly helpful when the officer in the case confirmed that it was his view also! The case was subsequently discontinued."

***"The care shown for their clients
could almost be described as 'pastoral' "***



... but

“ There was a fundamental weakness, apparent to some degree on every file, to adequately confirm advice in writing, especially at the outset of cases.”

“ Despite our site visit, the dichotomy with the prosecution over the precise location of the locus in quo and its juxtaposition with the C.C.T.V remain unresolved”.... (This - to a 12-year-old client with Attention Deficit Hyperactivity Disorder – was simply unacceptable.)”

- With the expectation that cases will progress efficiently at each hearing, and ever tighter timetabling, it is also clear that reviewers expect a degree of persistence in coaxing instructions out of challenging or apathetic clients:

“Although P was written to on no less than six occasions, the letters never went beyond vague invitations to contact the writer’s secretary. Clients often do not help themselves, but this is a problem that members of the Criminal Defence Service encounter and overcome on a daily basis. Much more persistence and imagination was called for in obtaining instructions than was seen in this file sample.”

“Standard letters were never tailored sufficiently to the circumstances of each case, so that clients in custody were regularly invited to attend the office or reminded of the importance of keeping their bail conditions, and quite young children addressed as ‘Mrs’ or ‘Mr’.”

“It is again emphasised that failure to update standard wording is seen by Reviewers as a serious and widespread concern, especially when, as in this

case, the Rule 15 letter gave clients information about funding that was misleading, or just plainly wrong.”

“Much of the correspondence was simply incomprehensible. It would be difficult to imagine the sense of disillusion and concern that the client must have experienced on reading the following, ‘We have forwarded your recent letter to Counsel, but her advice about your proposed Crown Court erection is still as firm as ever’. ”

the writer’s secretary ...”

Crime Peer Review Panel Members

Previous versions of this Guide were written and agreed by all the Crime Peer Review panel members at the time. This edition builds on those earlier versions as previously published and has received updating amendments by Zaki Hashmi and Ruth Oakes

