



Independent
Quality Assessment
of Legal Services

IMPROVING YOUR QUALITY

A guide to common issues identified through Peer Review

crime

Foreword

Improving Your Quality

A guide to common issues identified through Peer Review

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

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

We are pleased to introduce 'Improving Your Quality – Crime', which is intended to give the profession access to peer review findings and help support those wishing to achieve the highest levels of quality of legal advice and work.

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

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

The 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 criminal defence services. We would welcome the opening up of the world of legal competence to such scrutiny and debate.

Avrom Sherr

Director of Institute of Advanced Legal Studies

Contents

1. Does the fee earner have sufficient experience to deal with the case?	2
2. Has the adviser demonstrated persistence and determination in obtaining instructions from clients and/or statements from witnesses?	3
3. Are Crown Court cases prepared in sufficient detail?	4
4. Are clients in custody visited to obtain instructions?	5
5. Does the file show detailed analysis of the evidence in the case?	6
6. Are proofs and comments on the prosecution evidence taken in contested cases?	7
7. Are correct pleas lodged at the right time following appropriate advice to clients?	8
8. Are clients advised of the weaknesses in their case in a timely manner?	9
9. Are important matters relating to case preparation dealt with in a timely manner?	10
10. Is there evidence of client dissatisfaction with the service they have received?	11
11. Is alternative disposal of the case actively pursued on behalf of clients?	12
12. Are clients given written advice on the strength of evidence, plea, venue and likely sentence?	13
13. Are clients given clear (and written) advice regarding sentence?	14
14. Are clients advised of the progress of their case and the next steps in a timely manner?	15
15. Are clients sent final outcome letters explaining the effect of the disposal of the case and advice regarding appeal?	16
16. Are files organised, in chronological order and legible?	17
17. Are defence statements submitted on time and according to client's instructions?	18
18. Are mental health issues considered when they arise?	19
19. Are there adequate procedures for dealing with conflicts and other ethical issues?	20
20. Are experts used appropriately?	21
21. Are statements or background detail taken in mitigation?	22
22. Are letters/pro-forma tailored to the client and in plain English?	23
23. Are all actions/steps undertaken necessary for the case?	24

Does the fee earner have sufficient experience to deal with the case?

Why does this matter?

The advice at the Police Station at the start of the case is often crucial to the outcome. The inappropriate use of inexperienced fee earners on serious cases at the Police Station raises concerns about the suitability of the advice given. Similarly the inappropriate use of inexperienced fee earners in case preparation raises concerns that the case may be insufficiently prepared.

How can I check this is on my files?

- Does the experience/seniority of the fee earner conducting the case match the seriousness of the offence and the complexity of the case?
- Are inexperienced fee earners closely supervised if they are working on serious cases?
- Are client instructions documented, understood and actioned?
- Is appropriate advice given at the police station regarding disclosure and the client's instructions?
- Is there appropriate proof of evidence on the files (if applicable)?
- Is there a full brief to Counsel on the files (if applicable)?

What will help?

- Appropriate case allocation – routinely assess case complexity and issues and confirm match with fee-earner's competence or the next step in their development (See SQM D4.1 Case allocation).
- Implement a pro-forma police station booklet.
- Ensure that file review systems include police station work.
- Schedule (according to case complexity) regular case reviews and fee-earner supervision sessions, to assess the work done and the ability of fee earner performing the work.
- Keep a supply of interview tapes from significant or interesting cases for junior fee earners' reference, for example demonstrating appropriate intervention.
- Encourage fee earners to take legal reference sources to the police station.

“The advice at the Police Station at the start of the case is often crucial to the outcome”

Has the adviser demonstrated persistence and determination in obtaining instructions from clients and/or statements from witnesses?

Why does this matter?

Failure to obtain sufficient instructions from clients and witness statements means there may be a concern about the advice given to the client and the way the caseworker has conducted the case.

How can I check this is on my files?

- Are the clients' instructions clear on the attendance notes (particularly those notes at every hearing)?
- Is there a signed proof of evidence?
- Do correspondence and telephone records show that the client has complained or expressed dissatisfaction about the service they received?
- Are advance disclosure and committal papers sent or shown to clients for their comments?
- Are comments from clients properly and coherently recorded, and cross-referenced to the papers?

What will help?

- Offer clients specific appointments.
- Consider taking instructions at pre-trial hearings.
- Consider taking instructions over the telephone if it is difficult to get the client in for a meeting.
- Warn clients that not providing instructions may have a detrimental effect on the outcome of their case and may cause funding for their case to be withdrawn.

“Consider taking instructions over the telephone if it is difficult to get the client in for a meeting”

Are Crown Court cases prepared in sufficient detail?

Why does this matter?

Insufficient preparation is likely severely to prejudice the client's case on the basis "fail to prepare, prepare to fail". In Crown Court cases the solicitor should be working as a team in partnership with Counsel, not leaving most things to Counsel alone.

How can I check this is on my files?

- Are briefs comprehensive and detailed?
- Do Briefs contain analysis of the relative strengths and weaknesses of the case from either side?
- Does the Brief to Counsel deal with all issues in the case, including its history, which may not be apparent from the prosecution papers?
- Do fee earners seek "Through" orders where appropriate?
- If "Through" orders are obtained, is the case preparation comprehensive prior to committal (for example, full proof of evidence and client's comments on all prosecution statements)?
- Is there adequate liaison with Counsel or Counsel's clerk?
- If there are switches of Counsel, is there notice given or explanation of the change?

What will help?

- Draft a pre-committal checklist.
- Produce a standard format brief with sub-headings including discussion of the issues prompted by the above.

- Fee earners should consider whether the following are required:
- Proofs of evidence
- Statements from all available witnesses
- Visits and photographs of the scene
- Re-interviewing prosecution witnesses
- Defence case statements
- Chronological analysis of prosecution evidence
- Analysis of unused materials
- Ensure that briefs do not just refer the advocate to the prosecution statements for details of the prosecution case and to the client's police interview for instructions.
- Instruct Counsel to consider whether any enquiries are necessary and, if so, advise in writing as soon as possible (Code of Conduct of the Bar).
- Consider retaining a central record of previous briefs under offence categories for reference.
- Ensure that chamber's senior clerks and Counsel are aware that timely and adequate communication is a must if they expect to be instructed again (some firms and organisations enter into more formal "service level agreements" with chambers).
- At conferences, divide tasks between those present, including the client and, if appropriate, draft an agreed "to do list" or other documents relating to, for example, Bad Character notices.
- Ensure all staff are familiar with the Code of Conduct of the Bar (widely available in Criminal Law texts)

Are clients in custody visited to obtain instructions?

Why does this matter?

Clients in custody are usually in a more serious position than clients on bail. It is more difficult for clients in custody to keep in contact with their adviser, as they are unable to make appointments at the adviser's office.

How can I check this is on my files?

- Do fee earners visit clients in custody to obtain instructions?
- Are the client's instructions clear on all attendance notes, particularly attendance notes at every hearing?
- Is there a signed proof of evidence?
- Do correspondence and telephone records show that the client was dissatisfied with the service they received?
- Are advance disclosure and committal papers sent to clients for their comments if appropriate?
- Are comments from clients properly and coherently recorded, and cross-referenced to the papers?

What will help?

- Ensure that all visits to clients in detention are recorded on attendance notes.
- Ensure that clients in detention are sent follow-up letters confirming instructions after each visit. If letters confirming instructions are not sent to the client (for example, due to the sensitivity of the case) the reasons should be recorded on the file.
- A client in custody who is isolated would benefit from the continuity of contact with the same fee earner. Attempt to ensure continuity of fee earner visiting the client.
- Review the list of clients in custody on a regular basis and plan block visits where possible/ appropriate.
- Ensure that a fee earner of sufficient seniority and experience for the seriousness of the case visits the client.

“Clients in custody are usually in a more serious position than clients on bail”

Does the file show detailed analysis of the evidence in the case?

Why does this matter?

A lack of analysis of the evidence against the client may lead to wrong or inappropriate advice.

How can I check this is on my files?

- Is the correct advice given on the evidence recorded on attendance notes and correspondence to the client?
- Is there evidence on attendance notes of internal perusal of the prosecution statements and analysis of the evidence?
- Has there been proper consideration and discussion with the client of mode of trial and plea?
- Does the Brief to Counsel (if appropriate) deal with the strength of the prosecution and defence evidence?

What will help?

- Consider a case plan appropriate to the seriousness and complexity of the case.
- Consider using a flow chart to analyse evidence.
- Take client's comments on the Prosecution Papers. This will prompt consideration of the evidence.

“Consider a case plan appropriate to the seriousness and complexity of the case”

Are proofs and comments on the prosecution evidence taken in contested cases?

Why does this matter?

Without a proof it will be difficult for the trial advocate to prepare proper cross-examination of witnesses.

How can I check this is on my files?

- Do attendance notes contain full instructions from the client?
- Are proofs taken?
- Have the client's comments on the Prosecution evidence been taken?

What will help?

- Send letters to clients specifying an appointment for proofs to be taken.
- Consider taking a proof and comments at court.

“Consider taking a proof and comments at court”

Are correct pleas lodged at the right time following appropriate advice to clients?

Why does this matter?

The late entry of guilty pleas could greatly affect the client's sentence since sentencing guidelines indicate that only a minimal discount should be given if a client pleads guilty on the day of the trial.

How can I check this is on my files?

- Is there a proper issue to dispute (check this from the available evidence)?
- Is there a tendency to enter not guilty pleas in most cases?
- If there was a late change of plea, does the attendance notes for final hearing provide any explanation as to why this occurred?
- Is there a pattern of unaccountable late entries of guilty pleas? (Check the outcome codes, as they should reveal this concern).

What will help?

- Ensure that clients are reminded appropriately as to credit for guilty plea; this advice should be recorded in attendance notes and letter(s) to the client.
- If there is a (late) change of plea ensure that this is endorsed on the file and signed by the client.
- Check the outcome codes for Criminal work.
- Ensure all staff are familiar with guidelines on sentencing, and on discounts for guilty pleas, such as those published by the Magistrates' Association and the Sentencing Guidelines Council.

“Ensure that clients are reminded appropriately as to credit for guilty plea; this advice should be recorded in attendance notes and letter(s) to the client”

Are clients advised of the weaknesses in their case in a timely manner?

Why does this matter?

Failure to advise clients of the weaknesses in their case at an early stage may cause cases to drift and possibly proceed in the wrong direction.

How can I check this is on my files?

- Is the client being properly advised as to the strengths/weaknesses of their case?
- Do Briefs to Counsel (if applicable) deal properly with the strength of the evidence?
- Has the client been sent prosecution statements for their consideration?
- Has there been proper consideration of mode of trial and plea?
- Has the mode of trial and plea been confirmed in writing to the client?

What will help?

- Ensure that the client acknowledges any advice on the weaknesses of their case by signing the advice letter/notes.
- If instructed, seek Counsel's written advice on the weaknesses of the client's case for provision to the client. If appropriate provide client with notes of conference with Counsel.

“Ensure that the client acknowledges any advice on the weaknesses of their case”

Are important matters relating to case preparation dealt with in a timely manner?

Why does this matter?

Suppliers should be pre-emptive and far-sighted in directing the case, not simply reacting to events. Dealing with case preparation in a timely manner will ensure that the case is thoroughly prepared and there is sufficient time to deal with any problems.

How can I check this is on my files?

- Are client's instructions being implemented? (Check attendance notes, in particular those at every hearing)
- Are clients sent prosecution statements for their consideration?
- Do correspondence and telephone calls from clients contain complaints about lack of timeliness?

What will help?

- Take comprehensive instructions early on in the proceedings.
- Provide a "to do" section for both client and supplier in the outset letter: a case plan appropriate to the seriousness and complexity of the allegation(s).
- Regularly review whether the case plan has been followed.

“Dealing with case preparation in a timely manner will ensure that the case is thoroughly prepared and there is sufficient time to deal with any problems”

Is there evidence of client dissatisfaction with the service they have received?

Why does this matter?

Client dissatisfaction erodes the client's confidence in their legal representation and in the fairness of the judicial system, and makes clients less likely to accept advice.

How can I check this is on my files?

- Is there evidence of client dissatisfaction with the service they have received in attendance notes or client correspondence?
- Is there regular communication with the client to explain any delay in progress that could lead to dissatisfaction?

What will help?

- Implement and follow an effective client care system and complaints procedure (for example, the SQM complaints procedure or The Law Society Conduct Code example).
- Consider performing "client satisfaction" surveys to identify any negative trends.
- Note every expression of dissatisfaction whether telephone call, comment at Court, dissatisfaction with outcome etc. and how the problem was resolved.
- Change solicitor with conduct of the case if the client is dissatisfied.
- Respond promptly to all client contact.

“Implement and follow an effective client care system and complaints procedure”

Is alternative disposal of the case actively pursued on behalf of clients?

Why does this matter?

A pro-active approach to alternative disposal of the case can achieve a more favourable outcome for the client (for example, mental health diversion or suggesting alternatives to prosecution such as simple or conditional caution (or reprimand or warning) or bind over).

“A pro-active approach to alternative disposal of the case can achieve a more favourable outcome for the client”

How can I check this is on my files?

- Is the option of alternative disposal considered early and throughout the case?
- Do file notes or letters show that the caseworker/solicitor has suggested the full range of alternatives to the client?

What will help?

- Record any communication with the Prosecution regarding pleas.
- Insert a prompt in pro forma instruction sheet such as “Alternative Disposal?”

Are clients given written advice on the strength of evidence, plea, venue and likely sentence?

Why does this matter?

If advice is not confirmed in writing, there is a chance that the client may misunderstand oral advice on these matters.

How can I check this is on my files?

- Does the correspondence to clients contain information about the strength of evidence, plea, venue and likely sentence?
- Is the advice on strength of evidence, plea, venue or likely sentence clear and appropriate to the client?

What will help?

- Crosscheck correspondence with attendance notes to ensure that the advice has been confirmed to the client in writing.
- Ensure clients receive follow up letters confirming instructions and advice after each significant development in the case.
- Consider enclosing attendance notes to the client, especially if endorsed with their signature.
- File reviews and supervision.

“Ensure clients receive follow up letters confirming instructions and advice after each significant development in the case”

Are clients given clear (and written) advice regarding sentence?

Why does this matter?

Clients who are given unclear or misleading advice as to sentence are likely to be dissatisfied with the way the adviser has handled their case, particularly when there is a risk of custody.

How can I check this is on my files?

- Has the client been given advice regarding sentence?
- Was the advice clear and accurate?
- Has advice regarding sentence been confirmed in writing?
- Is there any discrepancy between advice given and final outcome?

What will help?

- Ensure that advice on sentence is given at an early stage.
- Cross check advice given with the final outcome on the file for any discrepancy
- Review advice on sentence regularly to cover any change in charges or circumstances.
- Link advice on sentence with advice on appeal in closing letters: Outline the sentence received and its implications, followed by advice on whether the client has any chance of successfully appealing it. If the advice is against appeal inform the client what they must do to appeal themselves if they disagree with the advice.

“Review advice on sentence regularly to cover any change in charges or circumstances”

Are clients advised of the progress of their case and the next steps in a timely manner?

Why does this matter?

Long dormant periods and delays in advising clients of the progress of their case or the steps to be taken next may lead to inefficiency in the conduct of the case, insufficient time to prepare and client dissatisfaction.

How can I check this is on my files?

- Is all correspondence to clients timely, particularly after Court hearings?
- Are clients satisfied with the service they receive?
- Are all key dates met?
- Are there any unnecessary adjournments?
- Is it clear from the file that the client is aware of the progress of the case?

What will help?

- Implement an efficient diary system to ensure that files are regularly brought to the attention of the fee earner with the conduct of the case. The diary system should list key dates including follow up contact.
- Set standards for dealing with correspondence and telephone calls.
- Copy correspondence with and from other parties to the client “for information” or “comment”.

“Implement an efficient diary system to ensure that files are regularly brought to the attention of the fee earner with the conduct of the case”

Are clients sent final outcome letters explaining the effect of the disposal of the case and advice regarding appeal?

Why does this matter?

Final outcome letters ensure that clients are not in doubt about their position (for example, length of time of imprisonment they will actually serve, payment of fines) and their right to take matters further if appropriate.

How can I check this is on my files?

- Do final letters contain adequate explanations of the effect of the disposal of the case and advice on appeal?
- Does the final letter agree with the attendance note of the final hearing?
- Is the advice (especially on appeal) individually tailored and not simply standardised wording?

What will help?

- Advise clients in time for appeal.
- Advise clients what they can do if they disagree with the advice on appeal.
- Send standard outcome (end of case) letters including advice on time for appeals, returning original documents to clients etc

“Final outcome letters ensure that clients are not in doubt about their position”

Are files organised, in chronological order and legible?

Why does this matter?

Files that are disorganised and contain illegible handwriting are difficult to refer back to and would not pass the “pick up test”.

How can I check this is on my files?

- Are your files organised and in chronological order?
- Would your files pass the quick ‘pick up’ test if you were absent?
- Are your pro-forma and handwritten file notes legible to others?
- Are notes that are illegible transcribed?
- Is the continuity of the case between fee earners unaffected by the order/legibility of the file?

What will help?

- Set up a proper and effective file review system.
- Date each item of attendance, preparation and correspondence.
- Consider typing up any handwritten notes in appropriate cases; double up this process by including the notes in advice letters to clients.

“Set up a proper and effective file review system”

Are defence statements submitted on time and according to client's instructions?

Why does this matter?

Failure to prepare a defence statement on time and according to the client's instructions may result in prejudice to the client and a potential negligence claim against the supplier.

“Failure to prepare a defence statement on time and according to the client's instructions may result in prejudice to the client”

How can I check this is on my files?

- Are defence statements submitted on time and, if not, does the file contain an appropriate explanation?
- Do defence statements accord with client's instructions?
- Are defence statements approved by the client prior to submission?
- Does your firm have an effective diary management system in operation?

What will help?

- Link the production and endorsement of the Defence Statement to a key date in the proceedings such as the committal itself or, if possible, an early conference with Counsel.

Are mental health issues considered when they arise?

Why does this matter?


Failure to consider mental health issues may affect the client's plea, fitness to plead or stand trial.

How can I check this is on my files?

- Is the type of communication appropriate for the client's circumstances?
- Are mental health issues that may affect the client's fitness to plead and/or stand trial, and may also affect their defence, considered when they arise?
- Do custody records indicate any mental health issues?
- Are client's previous convictions checked for matters such Hospital Orders and Restriction Orders and Guardianship Orders?
- Is there a full and proper proof of evidence dealing with all issues in the case?
- Are experts used appropriately?

What will help?

- Consider obtaining expert reports.
- Be aware of mental health issues in all interviews with a client.
- If mental health issues are established, consider ways of diverting the client from the criminal justice system.
- Training courses on mental health issues.



“Failure to consider mental health issues may affect the client's plea, fitness to plead or stand trial”

Are there adequate procedures for dealing with conflicts and other ethical issues?

Why does this matter?

A lack of adequate procedures for dealing with conflicts and other ethical issues (for example, how to approach and interview witnesses) may result in having to refer the client to other practitioners at an advanced stage in the proceedings.

How can I check this is on my files?

- Are conflict checks performed at all relevant stages of the case including when additional evidence is served?
- Are witnesses approached and interviewed in a proper way?
- Are any conflicts dealt with appropriately?

What will help?

- Ensure that the firm's procedures include a system of conflict checks.
- Refer to Section E1.2 of the SQM Guidance regarding how to identify and deal with conflicts of interest
- Refer to Law Society regulations and professional conduct guide (available on Law Society Website)
- Professional Ethics Guidance Team, Law Society, provides confidential support on issues of professional conduct (information available on Law Society website)
- Be aware that conflicts of interest may arise between the client and prosecution witnesses as well as between the client and co accused

“A lack of adequate procedures for dealing with conflicts and other ethical issues may result in having to refer the client to other practitioners at an advanced stage in the proceedings”

Are experts used appropriately?

Why does this matter?

Failure to use experts appropriately may result in the wrong advice being given to the client and a possible miscarriage of justice.

How can I check this is on my files?

- Was the instruction of an expert appropriate for the case?
- Has Counsel advised that an expert's report would be helpful?
- Was the expert adequately instructed to ensure that their report addresses all the important issues?

What will help?

- Maintain an approved panel of experts.
- Use The Law Society Directory of Expert Witnesses.
- Keep a log of (informal) references to the use of experts in unusual cases by professional colleagues.
- Use the Internet to identify appropriate experts.
- Address any training needs in terms of instructing experts.
- Liaise with Counsel in relation to experts.
- Can the expert's report be used in mitigation?
- Are caseworkers aware of the correct procedures for funding such disbursements?

“Failure to use experts appropriately may result in the wrong advice being given to the client”

Are statements or background detail taken in mitigation?

Why does this matter?

Where statements in mitigation or background detail are not taken there is a risk that the client's sentence may be affected.

How can I check this is on my files?

- Are sufficient instructions taken from the client to identify any mitigating and extenuating circumstances?
- Are clients given the opportunity to comment on Pre-Sentence Reports and any Medical or Mental Health reports?
- Is Counsel (where appropriate) made aware of mitigation?

What will help?

- Place old reports (for example, Psychiatric and Medical reports, Pre-Sentence Report) on current file for reference.
- Use, amend and update old proofs for reference.
- Keep the client at the centre of mitigation; do not rely on the Pre-Sentence Report without giving the client the opportunity to comment on it.
- Consider obtaining character witness letters or references where appropriate.
- Consider contacting probation officers to contribute to the Pre-Sentence Report's preparation.
- Consider early referral to outside agencies for voluntary treatment (for example, drug or alcohol counselling).

“Where statements in mitigation or background detail are not taken there is a risk that the client's sentence may be affected”

Are letters/pro-forma tailored to the client and in plain English?

Why does this matter?

An over-reliance on pro forma and standardised letters may be evidence of the adviser's lack of knowledge, inflexibility and inability to communicate appropriately with the client.

How can I check this is on my files?

- Is all correspondence to clients written in plain English?
- Do standard letters contain all relevant information to the client's case?
- Is all correspondence tailored to the individual clients circumstances?

What will help?

- Ensure that any letters are tailored to the particular client's case and do not contain overly complex and legalistic language.
- Delete or amend irrelevant sections or paragraphs in standard letters.
- Strike out irrelevant sections or mark "N/A" on pro formas.

“Ensure that any letters are tailored to the particular client's case and do not contain overly complex and legalistic language”

Are all actions/steps undertaken necessary for the case?

Why does this matter?

Inappropriate action may be evidence of the adviser's inflexibility and cause unnecessary expense to public funds.

How can I check this is on my files?

- Check outcome codes and any interview transcripts (for example, if the client is pleading guilty, interview tapes will usually not be needed).
- Check date of request by reference to the stage reached in the case: is the request still relevant?
- Was all work done necessary to the case?

What will help?

- Issue standard instructions to fee earners and secretarial staff as to when requests for custody records, interview tapes etc are likely to be appropriate.

“Was all work done necessary to the case?”

