



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



At the time of publication, it is not yet clear exactly what effects the EU Transition will have on law and process in this area. Users of this Guide must keep aware of the possibility for such changes and adapt their knowledge and procedure to them.

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 may lead to 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.

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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 are likely to 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. ('What we kill, we eat'). If this is your practice, then consider introducing a system to ensure that the situation 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 agencies. 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 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 (according to case complexity) 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 in 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 the client's instructions.
 - That there is an appropriate proof of evidence on the 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 (... see Positive Comment 3 above) ... 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. (The relevant law is mainly concerned with the absence of an appropriate adult during interview rather than a legal adviser.)"

"... 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

- Where applicable, satisfy yourself that there is an effective line of communication between the Police Station adviser and the caseworker.
- Although adjournments are now discouraged, urge caseworkers to be persistent and, where necessary, robust, in obtaining sufficient disclosure, either at the outset, or as soon as practicable thereafter.

- Whenever possible request, and review, Advance Disclosure electronically in advance of the first hearing. This can enable informed instructions and advice to be taken and given promptly at the first hearing.
- Require all caseworkers, at the outset of each case, to complete an 'initial instructions' form. (See generally chapter 7.)
- Ensure that the form 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.
- Insist that caseworkers always complete the form in a case-specific way.
- Instil in all caseworkers an appreciation of the importance of confirming with the client the instructions received. (A frequently recurring concern expressed by Crime Peer Reviewers is over the inadequacy of outset letters in this regard ... 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 that the reason is noted and that there is a diary or other back-up system for remedying the issue.
- 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 in this way is likely to produce better instructions than where the client feels marginalised.
- Encourage caseworkers when practical to provide clients with copies of advance disclosure, 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 can be vitally important. (see R v Allen 2017)
- When clients intend to plead guilty, is sufficient effort made to identify any mitigating or extenuating circumstances?
- Encourage caseworkers to consider obtaining character witnesses, or letters or references where appropriate.
- In contested or Crown Court cases, ensure that a signed proof of evidence is taken as a matter of routine, and that the client is provided with a copy of it.

- 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.
- 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 respond, insist on efforts being made to explain the consequences and get around the lack of co-operation.
 - Warning clients that not providing instructions may have a detrimental effect on the outcome of their case and may cause funding to be withdrawn will often galvanise them into action.
 - Ensure that caseworkers understand the need constantly to review the adequacy/accuracy of the client's instructions as the case develops and further evidence is disclosed.
 - Help them to do this consistently by the use of standardised attendance and court hearing forms and 'progress' letters which prompt caseworkers of the need to review instructions and confirm in writing new developments and new 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 concerns or complaints from clients are addressed.
 - If the client's instructions disclose potential defence witnesses or other evidential leads, ensure that caseworkers are aware of the need to follow these up proactively, with persistence and determination.
 - Ensure that defence witnesses are requested to sign a proof of their evidence and are provided with a copy of it.
 - Be satisfied that caseworkers are adequately trained and resourced. (Failure to be proactive at this stage, or to seek witness summonses or necessary funding to instruct suitable experts increasingly attracts negative comment in Crime Peer Reviews ... See generally Chapter 8.)
 - Not being proactive in the ways described above increases the risk of failing to comply with time limits, sanctions and possible client prejudice.
 - Ensure that Counsel is fully aware of the client's instructions, and that any requests by Counsel for further instructions are followed up. Where an in-house advocate not familiar with the case is used, Peer Reviewers will still expect adequately recorded and updated instructions.

- Are the clients' 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?
- Is Counsel fully aware of any updates or changes to the client's instructions?



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 contact;
 - That a fee earner of sufficient seniority and experience for the seriousness of the case has conduct and that junior fee earners are being properly supervised.
- Place any old reports, such as psychiatric or pre-sentence, on current files for reference.
 - Consider contacting Probation officers to contribute to the pre-sentence report's preparation, particularly where a basis of plea was agreed at court.
 - Consider early referral to outside agencies for voluntary treatment.
 - If the client is in custody, take instructions on obtaining evidence of behaviour in prison. Has the client whilst on remand made the most of opportunities? Many clients whilst on remand may have taken part in and successfully completed a programme of education on e.g. anger management, or drug rehabilitation. What have been the results of tests for drugs whilst on remand? If negative, this can provide powerful mitigation in drug abuse cases, and may be sufficient to persuade the court that a non-custodial option is appropriate.

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, hence the space devoted to this issue in this chapter.
- 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 ...
 - 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, reviewer's 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 providers disappointed by their reviews!
- 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 sufficient written record of the advice they give. As with taking instructions, (see above), 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 letters, or, if acceptable to the



- client, electronically, provided a copy is kept on file. Indeed, failure to confirm advice in writing, especially at the outset of cases, is the single most commonly found 'Major Concern' in all Crime Peer Reviews completed to date, especially where there is evidence that clients have misunderstood, forgotten, or have otherwise been prejudiced as a consequence of this failing.
- In particular, it is clear that Peer Reviewers frequently express concern that clients intending to plead not guilty where the prosecution evidence is 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, or changing their pleas at too late a stage. 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, 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 the form of a letter.
- Without a permanent record of communication of the advice to fall back on, providers may risk allegations of negligence.

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

3.3 Case Specific advice

- Those providers who fail sufficiently to tailor advice to the circumstances of each case are consistently 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 not one word of advice about the client’s own case, or fail 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 and Competence Plus.

- Most frequently, this issue concerns advice on appeal. The cost of providing such advice is covered under the original representation order and all clients are entitled to such advice. It should not be assumed that a client has the same level of knowledge of sentencing law as expected of a provider. Sentencing Guidelines cover an ever increasing range of offences and case specific reference to them in advice on appeal will normally attract positive comment. A failure to advise on the merits of an appeal in a case where a successful appeal is unlikely would not normally be a Major Concern. This may be otherwise if there is a systematic failure to provide any such advice, or failures in specific cases to advise on appeals against conviction following trial or against custodial sentences.
- Peer Reviewers also clearly expect to see more than just advice on merit. Failures to advise on the time limit, funding issues, and the potential adverse consequences of pursuing a groundless appeal, have all attracted adverse comments which could have been avoided by the provider's use of an appropriate standard paragraph covering such matters.
- 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 a 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 submit a prepared statement, in interview. Reviewers frequently see wrong advice on appeal time limits (for example 21 instead of 28 days, or vice-versa).
- Suspicion over the correctness of advice, even if not directly made, 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, with no thought having apparently been given to silence, or a prepared statement.

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 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 nearly always include advice on what has to be proven, plea, and (if appropriate) venue.

- If there are contested issues, there should be written advice on the strengths and weaknesses of the prosecution and defence case, and depending on the nature of the case, law, evidence, witnesses, procedure and what the client and caseworker each need to do to secure the best result.
- Where a client remains in denial in the face of a strong prosecution case, Peer Reviewers 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.
- Where providers have clearly had regard to the Sentencing Guidelines in the advice given, this routinely attracts favourable comment in reviews, especially where the client has been sent a copy of the relevant extract.
- Clients pleading guilty should be given a broad indication of what sentence to expect. In particular, lightly convicted or vulnerable clients facing possible custody should be prepared for this possibility with the appropriate degree of sensitivity.
- Where cases are adjourned for sentence following conviction, ensure that caseworkers are proactively considering and advising on mitigating and extenuating circumstances.
- Collate information (from internal file reviews, client feedback forms, complaints, issues arising from case plan meetings, etc ...) to identify those caseworkers with possible training needs in the way they offer advice, and see those needs are addressed.
- Ensure caseworkers have access to legal sources 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 outset 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 you 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 full import of sentences that are not self-explanatory, and where relevant that the consequences of breach of sentence have all been made clear.

- Require caseworkers routinely to confirm appeal advice to all convicted clients. Although this might be regarded as unnecessary where a sentence is manifestly lenient, a consistent approach in all cases leaves no room for misunderstanding.
- Again, you can facilitate compliance with many of these advice requirements by the use of appropriate prompts or standard paragraphs. Although 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 where advice is not self-explanatory, the reason for the advice is noted 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.
- Finally, stress the importance of timeliness of advice. Is there a pattern of late change of plea? (You may find that outcome codes will provide an indication of this.) Set performance standards (e.g. no later than 7 days after the event/consultation) for the 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.



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.”

... 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.”

"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 nor 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)."

"Whilst clearly (V) was no stranger to custody and the Criminal Justice System, and she and the caseworker had a good and informal rapport ... *'and don't forget your toothbrush ...'* is not advice on sentence that would normally be appropriate!"

- Conversely, Peer Reviewers see several positive aspects of the 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 (and this Reviewer!) 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."

***"... don't forget your
Toothbrush ..."***

***"... 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.
- Insufficient preparation is likely severely to prejudice the client's case on the basis of "fail to prepare, prepare to fail".
- 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, the 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.
- As in any professional service, 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 having the client agree and sign a proof of evidence. In its final form, this should include 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, and any that are to be called to give evidence have also been provided with their signed proof.
- Ensure that caseworkers are prompted to ask the client whether s/he is aware of potentially relevant digitally stored/transmitted material in the possession of any potential prosecution or defence witnesses, or other third parties.

- Draft a pre- 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 of the prosecution statements and analysis of the evidence? Peer Reviewers often comment adversely on notes recording that considerable amounts of time have been spent considering (say) an s.51 bundle, 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 identified?
- Have conclusions been drawn?
- Have these conclusions been conveyed to the client, and confirmed in writing in language appropriate to the client's needs? (See chapter 9... Communication, and chapter 3 ... Advice.)
- Has there then been proper consideration and discussion with the client particularly on such issues as mode of trial and plea?
- 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 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 but potentially favourable witnesses.
 - Visits and photographs of the scene.
 - Re-interviewing prosecution witnesses.



- A Defence Case Statement.
 - Chronological analysis of prosecution evidence.
 - Analysis of unused materials, and appropriate further disclosure action, including steps to compel third party disclosure.
 - Applications to oppose/admit bad character or hearsay evidence, or special measures.
- Are briefs comprehensive and detailed? Do they contain analysis of the relative strengths and weaknesses of the case from either side? Consider producing a standard format brief with sub-headings. Instruct Counsel to consider whether any enquiries are necessary and, if so, advise in writing as soon as possible.
 - Ensure that chambers' senior clerks and Counsel are aware that timely and adequate communication is a must if they expect to be instructed again. (Some providers enter into more formal "service level agreements" with chambers.)
 - Ensure conferences are timely and well documented. Divide tasks between those present, including the client and, if appropriate, draft an agreed "to do list" relating to, for example, bad character notices. Confirm the outcome in writing to the client.
 - 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?
 - Is the choice of Counsel appropriate to the case and the client?
 - Reviewers are aware of the impact of funding constraints and that advocacy support cannot be provided throughout every Crown Court hearing. However, there is an expectation that on some occasions it will be provided. Where the client is clearly vulnerable, or the case serious or complex, failure to provide support can be regarded as a Major Concern. Again, it would be good practice to record on file that this issue has been considered, and the brief reason for the decision, (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].”

When work is claimed for, but not evidenced, this is frequently regarded as an aggravating feature ...

“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."

"There was no explanation on this file or either of the other Crown Court matters as to the absence of litigator support in circumstances where it was to be expected."

" 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."

... and ...

"It appeared that the client was represented at the Crown Court by in house counsel and that no brief had been prepared. The brief on file at the time the file was submitted for review was a two-page document, one page being a back sheet and the other an uncompleted Graduated Fee sheet."

***"... 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 concerns of this sort in a file sample, it tends to have a serious impact on the rating awarded.
- The Law Society and the Courts view ethical breaches seriously. They therefore attract the most serious professional sanctions and penalties.
- 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 (for example, how to approach and interview potential prosecution witnesses) 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.
- On the other hand, timely defence applications under the Rules, (e.g. to dismiss) can bring the client's case to an early and successful conclusion.
- Although Peer Reviews are not cost audits, Reviewers are solicitors who have an obligation to report serious misconduct findings to the Solicitors Regulation Authority (SRA) and to the Legal Aid Agency (LAA).
- Peer Reviewers understand how challenging the current funding provisions are, but their Reports increasingly 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 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.
- Ensure they are transparent in that each stage is properly 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 engage them. Providers should bear in mind that as experienced practitioners, Reviewers are unlikely to be 'taken in' by 'Chinese Walls' and the other various subterfuges that caseworkers sometimes adopt in order to retain a case/client if the proper course of action would be to cease to act.
- Ensure caseworkers have access to and are familiar with the appropriate guidance, such as Section E1.2 of the SQM on how to identify and deal with conflicts of interest, Section 5 Lexcel on risk management and Law Society regulations and professional conduct guide - available on Law Society Website.
- Ensure in particular that supervisors, your money laundering reporting officer, and others charged with monitoring ethical issues are familiar with such guidance and have a good understanding of appropriate legislation such as that relating to 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 over the concern with a senior colleague, supervisor or monitor.
- Deal immediately and firmly under your internal disciplinary procedures with transgressions.
- If failure to address conflicts is causing you problems, 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 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 (say) Defence Case Statements are met by ensuring files contain appropriate prompts and that they are diarised.
- Aspects of professionalism such as punctuality, restraint, courteousness, and appearance 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 seems to be a consensus between Reviewers that it is a breach of confidence to routinely 'copy in' a child client's carer to correspondence unless there is consent, or other good reason.
- Gifts to clients. Although this is generally covered in the Solicitors Regulation Authority guidance, providers should consider the wisdom of caseworkers providing funds to clients in custody. If they still decide to persist in this practice, then the funds should be sent to the Governor to be credited to the client's account, and under no circumstances sent direct to the prisoner.
- Domestic Violence cases seem to be the most 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, 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 18 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), does seem to 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 all too frequently that concerns arise because caseworkers are let down by poor systems of working, inadequate support, or insufficient training and resources.
- Able 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, either text or web-based, or a combination of the two, and that these are kept up to date.
- Ensure that all CPD requirements are met, and that when caseworkers have further training needs, they are identified and addressed.
- Ensure you have adequate support workers for typing, filing and other administrative tasks, or that if caseworkers themselves are required to perform these functions, they have sufficient time.
- Hold regular 'brainstorming' sessions where caseworkers and support workers themselves can voice concerns or make suggestions for improvement to your working practices.
- Drive up standards by actively promoting good practice. Collect, and encourage caseworkers to collect, examples of good practice, (e.g. a well-drafted Defence Case Statement) 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 in the same way.
- Encourage caseworkers to maintain a 'first aid kit' of examples of good practice, case law and other frequently cited authorities and practice directions.
- Do your files pass the 'pick up' test in that a colleague having to work on an unfamiliar file would find it easy to ascertain the current position?

Comments on good file maintenance and management are a very common ‘Positive Finding’ in Crime Peer Reviews and are still regarded by Reviewers as an important 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 (R v Feltham Magistrates Court 2001).”

... 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, who even had to provide a copy of the judgement.”

“It was of great concern that (the client) was advised without reference to the leading case ...”

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

Why does this 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'. Reviewers have noticed a marked increase in the number of Reports where such comments are to be found.
- 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 above). 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 'Rule 2" (Old Rule 15) or 'Client Care' letter;
 - A Police Station booklet/pro forma;
 - An Initial Attendance and Advice form;
 - Your client specific outset letter, and also your outcome letter;
 - 'Progress' letters to clients;
 - A brief to counsel;
 - An application to a Judge in Chambers for bail;
 - A Defence Case Statement;
 - Applications to Admit/Exclude Bad Character Evidence, Special Measures Evidence, Hearsay Evidence etc ...;
 - Appraisal forms for Counsel, and other third party agencies you use.
 - A template or standard series of prompts for what should be covered in your court attendance form.

- A standard paragraph to clients about:
 - Bail (see Para...);
 - Attending trial;
 - Credit for guilty plea;
 - Sentence expectation;
 - 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, pay close attention to the relevant primary legislation, rules and regulations. Not only should this ensure accuracy, it will often provide the wording for the prompt you require. For instance, all the important prompts for a Defence Case Statement template can be gleaned from Ss.5 and 6 and other relevant sections of Criminal Procedure and Investigations Act (CPIA) 1996.
- 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 ... (cases of G.R.&D.E.).

- 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.”

**“... *A triumph of form
over substance*”**

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

Why does this 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. It might be accompanied by an appropriate reference to the court to seek prosecution compliance.
- The use by a provider of, for example, applications to adduce hearsay, bad character or business record evidence or for special measures for defence witnesses is also likely to be regarded by Reviewers as indicative of good quality work, as would be the appropriate opposition to such applications made by the prosecution.
- The highest grade rating of Peer Review is Excellence. In a significant number of reports where the provider's sample has been rated as Excellence, the reviewers have identified outstanding work in pursuing prosecution disclosure.
- It cannot be overstated that the growth in digitally stored and transmitted data, and especially posts on social media platforms provide proactive caseworkers with opportunities to further the client's case and undermine the prosecution's
- Achieving the early disposal of a case on a basis which is favourable to the client has always been regarded by Peer Reviewers as a positive, but since the last version of this Guide was released it has undoubtedly grown in importance as a 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.
- Perhaps the single most significant development since the last publication of the Guide was released has been the impact of the Criminal Practice Rules and Protocols, and all the steps taken to promote speedier justice, such as communication by secure email. Time is now of the essence and lack of proactivity is simply no longer an option.
- The early and efficient disposal of cases in this way is favourably funded.

What might help us to get this right?

- Ensure that training needs are met, particularly with regard to such matters as:
 - The Disclosure procedures and particularly Ss 5 to 8 of CPIA;
 - Fought Bail procedures;
 - Provisions for admitting/excluding Hearsay evidence;
 - Procedures for admitting/excluding evidence of Bad Character;
 - Advocacy;
 - Procedures for compelling the attendance of witnesses;
 - ...and for their evidence to be given by 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 dogged persistence. Trenchantly worded condemnation of (say) the behaviour of the complainant, or a police officer, when deserved is not only perfectly acceptable, but essential, provided it is appropriately expressed. Try to foster this adversarial attitude amongst caseworkers when the circumstances warrant it.
- Ensure caseworkers are aware of the range of diversionary and alternative disposals available.
- Ensure that the option of 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 (CPS), e.g. by secure email, and ensure that all forms of attempted 'plea-bargains' are noted on or copied to file.
- Convince 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 purely from the self-congratulatory descriptions of the hearings as summarised in letters to the client!)
- Providers could also bear in mind that letters may be the only way you can record good work that would not otherwise leave any 'footprint' on the file and might otherwise be missed by a Peer Reviewer.

*“...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 immediately steps to obtain the client’s release from custody when the case was discontinued. On behalf of the client V, the provider made considerable efforts to seek accommodation and a bail address, with regular contact of family members for that purpose. A proactive and detailed approach was made to 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 2007 asking her to make an appointment to give instructions ‘... before or immediately after Christmas and certainly before the trial date of 7th January 2008’. These examples demonstrated at 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 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 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 this 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 serious limitation of Peer Review that Reviewers are unable to see you advocating or dealing face to face with your clients. For this reason, they pay particular attention to what evidence there is on file of your communication skills, your people handling skills, and your powers of persuasion.
- The nearest 'proxy' we have to judging your communication skills first hand is to look at how you express yourself in correspondence. Not surprisingly, therefore, findings based on quality of correspondence, especially with the client, are frequently found in Reports.
- Your clients have come to you for help because in one way or another, they are all in trouble with the law. They are therefore naturally at times going to be anxious, angry, in denial and fearful. They will respond better to a caseworker who shows understanding of their concerns. By putting clients, so far as it is possible, at their ease, they are 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 and rights and in particular to ensure that they are advised not to discuss the allegation(s) with the police until a legal representative is present. This issue has been a concern in a number of recent reviews.

- 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 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 see several positive aspects of the timely and appropriate confirmation of advice. Stress the importance of always confirming advice, in plain English, at the first opportunity after it has been given.
- 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 a clear sense of frustration at the fact that a significant number of caseworkers dictate but do not check correspondence before sending it. This coupled with the growing use of voice recognition software has produced at least one recent file sample in which most correspondence was described by the Reviewer as “*incomprehensible*”!
- Where used, are your typists 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 feel 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 hearings sent out 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. Insist, therefore, that where letters cannot be sent out immediately, a diary note or other ‘to do’ reminder is made. Ensure that it requires the work to be done within seven days at the most.
- Is correspondence “user friendly”? Correspondence to the client not appropriate to the client’s level of understanding, or overuse of jargon, often attracts adverse comment.
- Ensure that letters to the client are case-specific and sufficiently detailed by providing examples of good practice. Consider utilising the file cover to provide a series of prompts, at appropriate stages of a case, as to what issues should be addressed.
- Separate tailored correspondence from Rule 2 (old Rule 15) type correspondence. Many providers achieve this by enclosing a ‘client care’

leaflet with a case specific letter. If you do wish to include generic and case specific material in the same correspondence, then do not overlook the need to tailor the letter to the needs of the specific case.

- When caseworkers go out of their way for clients, make sure 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 in 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 letters never went beyond
Vague invitations to contact
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 Philip Whittaker and Mike Gregson.

