Legal Aid Agency

IMPROVING YOUR QUALITY IN HOUSING

A guide to common issues identified through Peer Review

Foreword to the guide
Improving Your Quality In Housing

A guide to common issues identified through Peer Review

Users of this Guide must keep aware of the possibility for changes in law and procedure 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 has provided a unique opportunity with access to a wealth of information directly related to the quality of legal advice and information given to clients and work carried out on behalf of clients. It allows us to identify areas of good practice and areas in need of improvement. The guide will also be taken into account by Reviewers in assessing work seen under Review.

We are pleased to introduce this new edition of '*Improving Your Quality – Housing*', 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 has been updated and changes in procedure have been taken into account. The Guide is not intended to be a Compendium of the law, and where law, practice and procedure differs (such as in Welsh Homelessness cases) those providing legally aided services must ensure they are aware of such differences.

The guide makes available common quality issues identified by Housing 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 in improvement.

These suggestions for making improvements are not suggesting a standard approach. Nor are they an exhaustive list; they are only some of the ways that improvements can be made. Your entity or 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 have also led to a more general debate concerning standard-setting, and the best approaches to dealing with specific quality of advice issues. We continue to welcome the opening up of the world of legal competence to such scrutiny and debate.

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

Table of Contents

1. Have full and clear instructions been taken and recorded?

Why does this matter?

The absence of a record of clear and comprehensive instructions means that:

- The client may not have been asked the appropriate questions.
- The information required from the client in order to fully and accurately advise may not have been obtained.
- Without such instructions having been recorded, advisers and supervisors cannot be certain that advice on all relevant aspects of the case has been given.
- Without evidence of the instructions given, advisers leave themselves open to complaints and possible negligence claims.

How can I check this on my files?

- Check that personal details, property/tenancy details, rent and income details, details of household members, any health issues, and a history of the matter have been taken.
- Do attendance notes fully record the information given by the client and cover the related aspects of the case one may expect (e.g. on a possession matter, has evidence of the rent due, benefit paid and any instructions on disrepair been taken)?
- Are the attendance notes, whether handwritten or typed, legible and logical?
- Have the instructions been confirmed in writing?
- Where subsequent attendances are required on the client, or others, is there a record of the details discussed, representing the time spent?

What will help?

- Checklists may assist in prompting advisers on the issues to be covered with the client.
- Adequate supervision, particularly of less experienced advisers, should be provided early on in the case, as this may identify where there may be gaps in information received, and steps then taken to remedy these, reducing any later impact.
- Ensure that advisers have adequate expertise in the field of work, as checklists alone are not enough.
- Advisers who are empathetic are better able to deal with clients who may be upset, embarrassed, nervous, reticent or simply find it difficult to express themselves.

2. Has the client received clear and comprehensive advice on all aspects of their case?

Why does this matter?

The absence of any record of clear and comprehensive advice means that:

- The client may not have been properly and fully advised.
- The client does not have a proper record of the advice they have received, or steps they need to take.
- The client will be less able to give fully-informed instructions and make decisions on their case.
- The client may not otherwise realise the consequences or impact of one event or action on another.
- The adviser cannot demonstrate that they have a firm grasp on the case and its presenting issues
- Without evidence of the advice given, advisers leave themselves open to complaints and possible negligence claims.

How can I check this on my files?

- Do attendance notes show that the client received clear and comprehensive advice?
- Was the advice then confirmed in writing?
- Was the advice provided generic, without relating it to the client's individual circumstances?
- Has the adviser considered the client's instructions and drawn appropriate conclusions?
- Is there an over-reliance on standard letters of advice?
- Has advice been updated as further evidence has emerged or as any issues have changed?

What will help?

- Provide adequate supervision to pick up this issue early on in a case.
- Ensure that advisers have adequate expertise in the field of work.
- Provide advisers with training and regular updates.
- If the adviser is unable to provide definitive advice to the client at the outset (e.g. for lack of information), this should be confirmed to the client in writing, and detailed advice given as soon as possible thereafter.
- Cross-check correspondence with attendance notes to ensure that the advice has been confirmed to the client in writing.
- If template advice letters are used, these should be treated as a prompt to advisers, rather than a substitute for properly tailored advice.
- Ensure clients receive follow-up letters, confirming instructions and advice after each significant development in the case.
- Ensure that the adviser can access higher tier advice (either internally or externally), where the matter may be or become complex or out of their area of experience.

3. Has the client been advised of the merits of their case?

Why does this matter?

- The client needs to be advised about the strengths and weaknesses of their case: they may be able to assist the adviser in improving these.
- If not advised, the client will be unable to make informed decisions and may be confused as to the likely outcome of their case.
- All steps possible should be taken to allay the client’s anxiety where it is likely there will be a positive outcome, but equally, the client should be advised realistically where there may be a negative outcome, especially in the absence of the client taking any steps advised.
- The merits of the case may alter as the case progresses and/or over time – e.g. the longer it has been since the last allegation of anti-social behaviour.
- The merits may affect how the case can be funded and/or pursued.
- Such advice helps to manage the client’s expectations and may prevent complaints arising.

How can I check this on my files?

- Do files show early advice on merits in the initial attendance note and client care letter?
- Is the merits advice clear – i.e. not vague or ambiguous such as “we will do our best on your case” – outlining relevant factors that either assist or harm the case?
- Is the advice on merits updated to reflect changes in the case or its arguments?
- Is advice updated as different stages in the case are reached and further evidence obtained?

What will help?

- Put headings in template letters to prompt advisers to record advice on merits.
- Reconsider merits as the case progresses and advise clients accordingly.
- Ensure that advice on merits is assessed in file-reviews and supervision.

4. Are advice letters tailored to each client's case?

Why does this matter?

Advice letters or the use of standard advice letters, that contain generalised advice and fail to address the particular client's case, means there is a concern that:

- The client has not been properly advised.
- The advice provided may be difficult for the client to understand and/or be irrelevant to the client's case.
- Clients are confused about which part of the advice relates to their case.
- Consideration has not been given to the individual facts of the client's case.
- The client's case is not receiving sufficient care and attention.
- The adviser may not have understood the case and its issues properly.
- The standard advice letters may be out-of-date if not checked and updated regularly.

How can I check this on my files?

- Do advice letters demonstrate awareness of the relevant client-instructions?
- Does advice relate to the facts and circumstances of the client's case?
- Is there evidence that clients are confused about the advice letters they have received (i.e. clients regularly seeking clarification of advice that has not been clearly explained, or confirmed in writing)?
- Do standard letters contain information that is out-of-date?
- Are all clients receiving exactly the same advice-letters?
- Have irrelevant paragraphs been removed from any standard letters?

What will help?

- Provide adequate supervision and file review to pick up this issue early on in a case.
- Ensure that advice letters include a record of the client's instructions, the advice given and the specific actions that the adviser and client are to take.
- Consider any relevant documents provided by the client, so that advice given takes account of these, alongside instructions, to weigh and give an idea of strengths and weakness of the case to the client.
- Review and update regularly any standard letters used.

5. Has the client's housing status been correctly identified?

Why does this matter?

Identifying the client's housing status is fundamental to identifying most of the rights the client has as an occupier. Failure to identify a client's housing status means that:

- It is likely the advice given to the client may be wrong, incomplete or misleading, prejudicing the client's position.
- The adviser may not correctly identify the legal issues and processes that apply to the case.
- The adviser may not properly weigh and assess the risk of a particular action.
- The adviser may not identify when a 3rd-party referral is needed and/or the urgency for such referral.
- The adviser may not identify when an application for Legal Aid is needed and justified.
- In the worst case, a client could be evicted if housing status has not been identified and appropriately acted upon.
- The client's expectations may be wrongly raised if the housing status is in fact worse than advised (i.e. an Assured Shorthold rather than an Assured Tenancy).

How can I check this on my files?

- Has the client's housing status been considered and identified?
- Has the status been correctly identified?
- Is there evidence on file to support tenancy status (i.e. copy Tenancy Agreement)?
- Has the client's housing status been confirmed to the client in writing?
- Has the client received advice that is specific to their housing status and relevant rights?
- Has the client been advised to pursue the wrong option, has a right that does not apply been advised, or an argument missed?

What will help?

- Ensure advisers have adequate expertise in the specific housing case-type.
- Ensure advisers have had training on the rights associated with each type of tenancy status – for example, the applicable possession process and defences.
- Provide adequate supervision to pick this issue up early-on in a case.
- Consider using checklists as prompts for instruction-taking, to guide advisers towards correctly identifying the client's housing status.
- Have internal processes that encourage advisers to promptly contact landlords for relevant paperwork.

6. Does the adviser appreciate and make correct use of the limits and scope of Legal Help/Help at Court and certificated funding in housing cases?

Why does this matter?

Failure to appreciate the limits and scope of funding in housing cases means that:

- The adviser may not be aware that further work or representation could be done within the same, or using a different funding type, resulting in an inadequate and incomplete service to the client.
- The adviser's failure to do work, or make a referral, may prejudice the client and deny them the opportunity to enforce their rights. For example, the Help at Court scheme permits representation at Court in housing cases on issues of mitigation (e.g. applications to suspend warrants, submissions that a Possession Order should be postponed). Not appreciating this can result in clients being incorrectly advised that funding is not available to represent them in Court and vulnerable clients having to represent themselves.
- The adviser's lack of awareness of the Funding Code as it relates to housing cases can result in Legal Aid applications not being properly made, being delayed or made late, and cases not being properly progressed.
- The client may not be afforded the costs' protection they are entitled to.
- If the adviser is doing work outside the scope of the funding/contract, this could be in breach of LAA rules or the organisation's contract, for which the organisation will not be remunerated.

How can I check this on my files?

- Has the adviser explored the availability of Legal Aid for the client's case?
- Are clients routinely advised that the Legal Help scheme does not cover disbursements and/or representation at Court in housing cases?
- Are clients routinely (wrongly) advised that there is a fixed cost limit on Legal Help matters?
- Are clients being advised to pay Court fees that a Legal Aid certificate should cover?
- Are there differential practices between advisers in representing clients at Court?
- Are there differential practices between advisers in making referrals and/or applications for full Legal Aid?
- Have delegated functions been utilised in urgent cases, where the situation justifies, and covering all aspects of the work reasonably required up until a substantive certificate may be granted?

What will help?

- Provide adequate supervision to pick up this issue early on in a case.
- Provide training for advisers on the Funding Code, and ensure they know when delegated functions should be used and/or when to approach the designated supervisor.

- Ensure advisers are aware of and have access to relevant materials (for example, the Funding Code, CCMS Quick Guides).
- Consider devising checklists as a prompt to advisers in considering funding issues.

7. Where appropriate, have relevant third parties been contacted and/or experts considered and properly instructed?

Why does this matter?

- Expert evidence often clarifies whether an issue is arguable or not.
- An expert may be able to confirm a client's instructions and add weight to his/her case – e.g. proof of a housing-related medical need or condition.
- The adviser is only an "expert" in dealing with the legal aspect of the case, and is not generally a witness, expert or otherwise.
- Advisers are professionally obliged to seek to achieve the best outcome reasonably possible for the client: expert evidence can assist in achieving that.
- Without such evidence, advisers risk presenting a weak case, leaving themselves open to complaints and possible negligence claims.

How can I check this on my files?

- Are experts routinely used, rarely, or never?
- Has an expert been used?
- Is there evidence that the adviser has considered the need for expert evidence/opinion?
- In a case involving a medical issue, has a medical expert been fully instructed, on the relevant criteria and expert-obligations, in order to provide a relevant and reliable report?
- In a case involving disrepair, has a suitable expert been identified and appropriately instructed, to include their obligations under the Court rules?
- Has Counsel's opinion been sought – e.g. in a complex and/or appeal case?
- Has the adviser wrongly cited an inability to use funding to incur expert's fees as a disbursement, as the reason for not instructing an expert?

What will help?

- Provide adequate supervision to pick up this issue early in a case, upon instruction.
- Have template letters of instructions to experts – e.g. for capacity, disrepair or "priority need" homelessness cases – pointing to the issues and criteria they need to address and the Civil Guide to the use of experts, if appropriate.
- It may be appropriate to make a file note of why an expert was chosen or not considered appropriate for use, or as to which field of expertise is required.
- Ensure advisers correctly understand the limits of funding and applicable expert rates, rather than applying a "blanket policy" against the use of experts.

8. Has the client been updated, as the case has progressed, up to and including the case outcome?

Why does this matter?

- Only advising a client at the outset of their case is not sufficient.
- Cases often change in merit and complexity as further facts and evidence emerge.
- The client should reasonably understand the issues in his/her case and be guided on making informed decisions on the case, particularly where settlements may be offered.
- The client will not otherwise understand the risks of taking, or not taking, a particular course.
- It is the client's case!
- It will help prevent complaints if a client understands how a case has arrived at its eventual outcome, especially if the outcome is unfavourable.

How can I check this on my files?

- Has there been regular communication with the client throughout the case?
- Do attendance notes show that further instructions have been sought from the client where new information has been received, or has the adviser simply assumed them?
- Is there evidence that the client has received updated advice, preferably in writing?
- Do clients regularly report confusion, indicating that the case-issues may not have been fully communicated or explained?
- Have the client's views and instructions been sought before any agreement, proposal or settlement has been proposed or agreed by the adviser?
- Has the client been sent a case outcome letter?
- Do cases regularly show clients ceasing to give instructions?

What will help?

- Ascertain the best means of communicating with the client at the outset of the case, as some clients may wrongly consider instructing solicitors is enough in itself.
- Where a client may be difficult to reach, arrange a third-party contact-point or regular intervals for the client to "check-in" with the adviser.
- Build a rapport with the client, to ascertain the best communication style, and avoid using jargon and overly legalistic terminology.
- Update clients when new information or documents arrive, explaining how this might impact the case, and follow this up in writing, wherever possible.
- Ensure advisers have client-contact before, and report back after, any potential proposals for settlement and Court hearings.
- Use headings in any precedent letters to prompt advisers to update the case, the options and next steps.

9. Has the case been dealt with so as to reasonably protect the client's interests?

Why does this matter?

- It may not always be possible to achieve the outcome the client desires, but reasonable efforts should be made towards this end.
- The client is relying on the adviser's legal knowledge to deal with the case, whilst keeping the client's interests in mind.
- The adviser is obliged to act to protect the client's interests and insofar as possible avoid any prejudice to the client.
- In doing so, the adviser can be more confident that the best outcome might reasonably be achieved.
- Where a case does not end favourably, this will not be due to adviser fault.
- This will avoid complaints and negligence claims.

How can I check this on my files?

- Have the client's interests, instructions and wishes been reasonably considered at each stage of the case?
- Has the client been advised and guided at each stage, so s/he can understand the process involved and express a view?
- Have enquiries and/or representations been made to the opponent or other third parties, to ascertain facts, put the client's case and challenge the opponent's case?
- Are Possession Orders (Suspended or otherwise) routinely being offered to the opponent at the outset, without the adviser checking the evidence, or making enquiries and submissions to avoid such outcome?
- Has third-party evidence been obtained in support of the client's case?
- Have deadlines been complied with?
- How did the case end – did it end favourably for the client, or at least, reasonably based on the facts and evidence?

What will help?

- Ensure clients have been advised at the outset and updated as the case progresses.
- Encourage advisers to make reasonable enquiries to seek evidence in support of the client's case – this can avoid unpleasant, late surprises.
- Seek to put the case at its highest at the outset in communications with the opponent.
- Challenge and question assertions made against the client, unless/until supported by evidence.
- Challenge and question assertions made by the opponent, unless/until supported by evidence.
- Seek to further the client's interests and wishes, but explain any unrealistic expectations.
- Explain to the client where and why a point is argued or must be conceded.

- Ensure advice on the outcome of the case is given to the client, its impact and any further steps the client must take, with or without third-party assistance.

10. Where the adviser has been asked to provide advice on areas of housing law of which they have little or no knowledge, have they taken appropriate action to ensure the client receives full and accurate advice?

Why does this matter?

An adviser's lack of knowledge of particular areas of housing law, and failure to refer the case or seek appropriate support, means that:

- The adviser may have failed to appreciate the limits of their knowledge and seek more specialist advice.
- The client is not provided with comprehensive and accurate advice, on all presenting issues, and made fully aware of their rights (e.g. to Counterclaim or pursue a claim for Judicial Review).
- The client may not appreciate the consequences or inter-relationship between issues on their matter (e.g. an outright Possession Order may lead the local authority to decide they have no duty to assist under Part VII Housing Act 1996).
- The adviser may not be meeting the LAA supervisor standard, and training and supervision procedures may be insufficient.
- The client's case may be conducted in a manner which may cause prejudice and may constitute negligence.

How can I check this on my files?

- Do the attendance notes show the client has been asked about linked issues, or have these been ignored?
- Is the advice in attendance notes accurate and coherent, or vague or even absent?
- Have advisers failed to identify their own limitations and sought assistance where appropriate?
- Are advisers making sufficient referrals on areas outside their expertise or which may be legally complex?
- Do advisers refer to higher tier internal/external advice, where available?
- Is there evidence of client dissatisfaction (telephone calls, letters of complaint)?

What will help?

- Ensure advisers are aware that they can and should seek guidance, either internally or externally – e.g. via specialist housing Counsel – if in doubt.
- Maintain an approved list and make use of experienced/reputable Counsel, where issues or merits may be unclear or complex.
- Encourage advisers to seek assistance where an area of housing law may be unfamiliar, complex, unusual or just less frequently encountered.

- Provide advisers with regular and appropriate (update) training on a variety of housing law areas.
- Ensure supervisors review files randomly and correctly identify adviser training and support needs.

11. Is the case-file and casework chronologically arranged and organised, so as to be readily accessible, and so that the facts and case-progress, can be readily established?

- **Why does this matter?**
  - The file must be readily accessible in the event other advisers need to work on it.
  - The case may need a change of advisers part-way – e.g. in the event of staffing changes, or other absence.
  - The case progress and stage the case has reached should be readily ascertainable.
  - The next step required to progress the matter should be apparent.
  - Delay may be caused and deadlines more-readily missed, if files are disorganised.
  - It should be possible to distinguish the work done on the case from documents received (e.g. the housing file or Court paperwork).
  - An organised file generally demonstrates ordered-thinking and confident casework.
  - In the event of any complaint or allegation of negligence, it should be possible for the complaints-handler to review the file.
  - Frequent duplication of documents does not assist and sometimes seeks to obscure the fact that little substantive work on a matter may have been done.

How can I check this on my files?

- Are the client's personal details evident at the start, together with their recorded instructions and any preliminary advice?
- Are the case-file documents ordered, legible and chronological?
- Are Court or other documents separate and labelled, as apart from the 'correspondence pin', even when dealing with electronic files?
- Does the correspondence pin contain a chronological account of all work done on the case-file, regardless of the work-type – e.g. whether personal attendances, the drafting of documents, emails (in or out) and/or telephone calls?
- Does the file, front-to-back, or back-to-front, tell the "case-story", from start to finish?
- If a colleague unfamiliar with the case was asked to look at the file, would they understand what the case was about and what had happened so far?

What will help?

- Consider what someone unfamiliar with the file would make of the case.

- Ensure cases are easily navigable and key-dates evident.
- Ensure others, not just the adviser conducting the matter, could scroll through the file, in the order the "papers" appear, and be able to ascertain the case-issues, the work done so far and the next anticipated steps.
- Have Court papers separately filed and either indexed or at least in date order.
- Have funding documents filed separately and in date order.
- Label documents according to their source, where appropriate – e.g. housing file, expert, medical or other client-documents – and placed on file in date order.
- Regularly summarise where the case has reached and what is next due to happen in letters to the client.

In Possession Cases

12. In discretionary cases, has the client been advised of the possession procedure (including, where appropriate, the rent and mortgage possession pre-action protocols) and what the landlord must prove to obtain possession?

Why does this matter?

- The client is otherwise not provided with comprehensive advice or made fully aware of their rights or the limits of such rights.
- The adviser's lack of procedural knowledge may prejudice the subsequent conduct of the case (e.g. they may miss the opportunity to counterclaim).
- The adviser will not identify defects in the landlord's case or paperwork and will not identify any technical defences or defences based on "reasonableness".
- Further enquiries that should be made, may be overlooked (e.g. witnesses, Housing Benefit).
- The adviser will be in a position of weakness when negotiating with a landlord and/or fail to seek sanctions, or to advance the client's case, where there has been a lack of compliance.
- The client may misunderstand the length of time before they face eviction (e.g. they may think they need to move out upon expiry of a Notice or immediately upon the making of a Possession Order, rather than on or by the execution date of a Warrant).
- The adviser will not identify cases where the tenant may be able to get Legal Aid.
- The adviser will not identify the need for or timing of a referral.

How can I check this on my files?

- Is advice on the appropriate possession procedure and what the landlord needs to prove at Court, confirmed in attendance notes and letters to the client?
- Have the Notice, any Court papers and any supporting documents, been requested and scrutinised?
- Has the adviser checked for protocol compliance, raised this with the opponent and advised the client, on whether compliance has taken place?
- Have procedural deadlines been complied with or missed?
- Has the client been advised as to how possession might be prevented and has any Defence been considered and/or pursued at Court?
- Has the adviser considered and advised the client of the likely timescales up to possession being obtained?
- Are third-party enquiries discussed and then made?
- Has the adviser, instead of the above, gone straight to proposing a Possession Order, Suspended or otherwise?

What will help?

- Have copies of the relevant protocols and the Civil Procedure Rules to hand.

- Ensure advisers are aware of which possession grounds relate to which types of tenancy, and which grounds are discretionary and which are mandatory.
- In discretionary cases, there should be evidence that advisers have considered both the ground and reasonableness – information from third parties may assist.
- Advisers should familiarise themselves with any local practices at County Courts and of local authorities, that may affect procedure and timescale.
- Cover these issues in supervision and file review.
- Provide training on these issues and update knowledge regularly.

13. Where the claim is based on mandatory grounds, has compliance with the **relevant provisions been checked and advised on, including those relating to service of Notice and other documents, and/or any deposit-protection requirements,** in addition to Court procedure?

Why does this matter?

- In a mandatory case, there may be few other potential grounds for defending or delaying possession.
- If the pre-action protocol has not been complied with, the claim may be stayed until it has (e.g. in Ground 8 cases).
- Non-compliance with the deposit and/or Notice requirements, or non-service of required documents, may amount to a complete defence to the claim.
- Service of an Improvement Notice or Emergency Remedial Notice by the local authority, might amount to a complete defence to the claim.
- As assured shorthold and fixed term (social) tenancies have become more widespread, protocol compliance and technical defences are a necessary component of the advice a client requires.
- A competent adviser will need to identify flaws or at least identify when an issue should be referred to Counsel.
- The client needs to know and be able to plan, if they are likely to have to move home.

How can I check this on my file?

- Have instructions been recorded on protocol, deposit payment/protection, HMO, service of required documents, and Notice issues?
- Have instructions been sought on whether the claim is a retaliatory eviction, and third-party enquiries been made where this may apply?
- Has an advice letter to the client outlined any technical, compliance, public law and/or procedural issues that may be called into dispute?
- Do letters to the opponent and/or Court refer to any relevant sections of the protocol, Housing Act 2004, Deregulation Act 2015, HMO regulations, PSED and/or service provisions, believed to have been breached?
- Do representations to the Court outline any protocol, procedural or public law irregularities?
- Is there evidence of any submission to the Court to stay, dismiss or postpone possession (up to 42 days), or deny costs, where appropriate?

What will help?

- Have the protocol and relevant source materials to hand.
- Ensure advisers are familiar with the above materials and make reference to them.
- Ensure advisers have received training on the protocols, forms of Notice and notice-periods, deposit protection and prescribed information/leaflets, HMO requirements, identifying tenancy types, basis upon which a Notice

and/or proceedings might be invalid, stayed, adjourned or dismissed, the PSED and postponements due to exceptional hardship.
- Ensure advice letters and letters to others outline any technical or procedural irregularities.
- Supervise less experienced advisers on mandatory possession cases, addressing the issues, before any deadline for response to a claim and/or hearing date.
- If in doubt, ensure advisers are encouraged to seek experienced Counsel’s Advice.

14. Have any public law defences, Counterclaims and/or arguments been considered and advised on, gathering evidence in support, as necessary?

Why does this matter?

- Such arguments may be the client's only line of defence.
- A landlord may use possession and/or mandatory grounds as expedient, without considering whether other means might legitimately achieve the desired objective.
- A client may have support-needs that have not been assessed or are not being met, that if met may resolve the need for possession.
- In bringing proceedings, a disabled client may be being subjected to unfair treatment and/or disproportionate detriment.
- A client's alleged behaviour or financial mismanagement may arise from a disability and/or lack of capacity.
- These arguments are not likely to be familiar to clients, so clients will rely on the adviser to be aware of and raise them.

How can I check this on my files?

- Has the status of the landlord been considered – i.e. are they are public body?
- Has the landlord advanced underlying and/or legitimate reasons for possession – have these been probed?
- Has the adviser demonstrated an awareness of potential public law and/or Equality Act issues and arguments, and advised on them?
- Has the adviser considered the landlord's stated policy and procedure, and any guidance documents issued to registered social landlords?
- Has the landlord been asked to account for any departure from its policies or guidelines – e.g. has a PSED impact assessment been evidenced?
- Has an appropriate expert been instructed to support an argument, as needed?
- Has Counsel's assistance been sought in advising on any issues noted and/or in the drafting any Defence?

What will help?

- Ensure advisers have access to up-to-date case law in this developing area.
- Have access to source materials – e.g. HRA, Equality Act 2010, local authority guidance and policies.
- Have precedent letters that can be tailored, as necessary, to send to landlords on these issues.
- Keep a register of experts, medical and other, who can be instructed at Legal Aid rates.
- Where an issue may need more in-depth analysis, refer it to experienced Counsel to advise on, until advisers feel more confident to deal with it themselves, in-house.

15. Where the claim is based on rent arrears, has the client been asked about the existence of any disrepair at the property and advised on any potential Counterclaim, in the proceedings, with evidence gathered in support, as necessary?

Why does this matter?

Failure to do so means that:

- The client has not been provided with comprehensive advice or made fully aware of their rights.
- The client is unaware that, in rent possession claims, the existence of an actionable claim for disrepair can afford a complete defence to possession and trigger a set-off of damages against arrears.
- The client's ability to resist the claim for possession is prejudiced to such an extent that a failure to ascertain whether there are any disrepair issues may constitute negligence.
- In some cases, a counterclaim for disrepair may be the only option for defending the claim, and failure to identify this could lead to the loss of the client's home.
- The adviser's lack of knowledge may prejudice the subsequent conduct of the case.
- The adviser may not pick up on cases where Legal Aid could be obtained and/or a referral made, rather than acceding to any form of Possession Order.
- The client may be left with a Possession Order and paying off arrears that ought rightly to have been reduced or cleared by way of set-off.

How can I check this on my files?

- Is there evidence that the client has been questioned about the existence of disrepair at the outset, and instructions recorded?
- Has the client been advised of the right to raise disrepair as a Defence & Counterclaim?
- Where the client has raised the issue of disrepair, did the adviser appreciate its significance and was it utilised to benefit the client?
- Was Legal Aid properly sought to issue and pursue a counterclaim?
- Has the adviser obtained any expert's opinion on disrepair (including any inspection reports by the landlord's employees), to pursue the potential counterclaim?
- Was any counterclaim pursued in the existing proceedings and/or reasonably resolved?

What will help?

- Ensure advisers are trained and aware of the relevance of disrepair in possession claims, especially those based on rent arrears.
- Ensure that advisers use instruction checklists (or other tools), which prompt them to ask about counterclaims for disrepair, at the start of each case.

- Ensure that precedent letters refer to the possibility of a counterclaim for disrepair.
- Ensure that this issue is checked-for in supervision and file review.
- Ensure that the organisation has adequate, up-to-date materials, sources, and reference materials etc, that provide information on this issue.
- Have precedent drafts of Defence & Counterclaim documents.
- Instruct an appropriate expert to inspect at an early stage: the disrepair protocol is disapplied.
- Issue any counterclaim at the time of filing the defence, if possible, to avoid the need for permission and/or potential prejudice.

16. Where a Housing Benefit or Universal Credit issue is critical to a client's case, has it been reasonably raised, explored and resolved, or otherwise promptly referred to an alternative advice agency?

Why does this matter?

- Problems with benefits can cause debt, distress, loss of a home and a decision that the client has become homeless intentionally.
- A client who is receiving too little benefit is likely to struggle to maintain their rent payments.
- A client who is receiving too much benefit is likely to incur an overpayment debt.
- In rent arrears possession actions by social landlords, the pre-action protocol requires them to assist with benefits and can inhibit the start of proceedings where a benefit is awaited.
- Careful examination of the benefit history and entitlement can prevent Possession Orders and is a reasonable line of enquiry for a competent housing adviser to pursue.
- An adviser, in a rent arrears case, is more likely to succeed if he/she can explain to the Court what the benefit problem is, the potential for challenge and the prospects of rectifying the issue to reduce the arrears.
- Strict time limits in the benefits system can mean that any delay in challenging will cause loss of entitlement, financial hardship to the client and, ultimately, eviction.

How can I check this on my files?

- Are relevant decision letters/Journal entries, requests and evidence of receipt of information, or other documents in the file?
- Do the documents on the file show that the adviser has considered communications from the Housing Benefit Department/DWP critically, to query gaps and shortfalls in benefit, under- and over-payments, with a view to reducing the same?
- Have enquiries of the Housing Benefit Department/DWP been made, setting out where problems are believed to lie?
- Does the adviser demonstrate an awareness of the operation of the Local Housing Allowance, "bedroom tax", the benefit cap, backdating and Discretionary Housing Payments, and how these might be applied, or disapplied, to the client's circumstances?
- Have clients been advised of what they need to do to seek resolution of any benefit issue?
- If the benefit issue has been referred for resolution to another person or agency, has the adviser sufficiently acquainted themselves with the detail to make any necessary representations to the landlords and at Court, and checked the progress with the referee?

What will help?

- Train advisers on the Housing Benefit provisions relating to backdating/overpayments, LHA, the benefit cap, bedroom tax, DHP, taking in lodgers and/or the option of down-sizing.
- Similarly, ensure advisers have an understanding of the operation of Universal Credit, in particular, the use of the client Journal in seeking the rent element, direct-landlord payments and direct arrears deductions.
- Analyse and critically-evaluate benefit-refusals, gaps or shortfalls, to assess where challenges might lie.
- Familiarise advisers with the deadlines for challenging benefit decisions.
- Have relevant literature, including guidance on the regulations easy to hand.
- Include relevant general advice on benefits in standard letters.
- Have precedent letters that can be tailored and uploaded, to enquire about the client's benefit position: chase for response, as necessary.
- Where the organisation is unable to deal with the benefit issue, ensure a prompt referral and follow-up enquiries are made – have a list of any referral agencies that might deal with benefits.

17. Has the client been advised of the potential outcomes of the case and the implications of a Possession Order, both at the outset and when an Order has been made?

Why does this matter?

- The client may not be aware of the types of and differences between Orders that are available, and therefore unable to consider with the adviser whether an Order is appropriate and compliance is realistic.
- The client may not be aware of any obligations under the terms of a Possession Order and the implications if those obligations are not fulfilled, including any cost-implications.
- The client may not be made aware that if they breach the terms of any Suspended Order, they can be evicted without further hearing.
- The client may not have been advised of future action they may be able to take, including, for example, an application to discharge, vary or appeal the Order, or suspend a later Warrant.
- The client may not have been advised of their re-housing options, after possession and if possession cannot be avoided.
- The adviser's lack of knowledge may have prejudiced the conduct of the case, as well as the client's position and future housing.

How can I check this on my files?

- Has advice on the range and types of Order open to the Court been outlined at the outset?
- Is advice on Possession Orders been set out in attendance notes and confirmed in letters to the client?
- Has the adviser considered the consequences that a Possession Order may have on the client and sought to minimise these?
- Has advice been given as to which Order may be appropriate/likely and as to the client's ability to sustain and comply with any terms?
- Has advice post-Possession Order been given, including what to do if a Bailiff's Warrant is threatened or received, and the effect of any Order for costs?

What will help?

- The starting position should always be to seek to avoid a Possession or other adverse Order, but if unavoidable, to minimise its term and effect.
- Ensure advisers properly understand the differences and effects of each type of Possession Order, and duration, where appropriate.
- Cover these issues in supervision: can possession be avoided and what type or terms of Order might best protect the client?
- Attendance notes should demonstrate that consideration has been given to the client's ability to comply with any Order made – e.g. for payment or as to behaviour.
- Precedent letters can cover these issues, provided they are then tailored to fit the circumstances.
- Ensure that file-closing procedures pick up whether or not this advice has been given.

18. Where eviction is imminent or a real possibility, has the client been advised of the possible consequences of homelessness?

Why does this matter?

The absence of advice on the possible consequences of homelessness means that:

- The client may not understand the significance of the steps they can take to prevent homelessness arising.
- The client is unaware of the limits on any subsequent local authority assistance available, and the difficulties they may encounter with any homelessness application.
- The client is ignorant of what may happen and what to do should they face street-homelessness.
- In light of such relevant information, client-instructions may differ.
- The adviser may lack awareness of what the client may face when homeless.
- The client may complain against the adviser should they be evicted.

How can I check this on my files?

- Do initial advice letters provide an outline of the risk of homelessness?
- Does the letter of advice, at the conclusion of any possession claim, contain a "next steps" section, particularly if the client has been unsuccessful?
- Is there a clear attendance note referring to potential homelessness and any difficulties the client may encounter on making a homelessness application?
- Is there evidence of advice on any initial Homelessness Reduction Act rights and assistance that might apply and/or of any approach to Social Services required? (More in-depth advice might justify the opening of a new matter)
- Is there evidence of advice on alternative housing options?

What will help?

- Ensure the possible consequences of homelessness are advised to the client as early as possible, before the conclusion of proceedings, and then reiterated at the conclusion.
- Ensure that the organisation has a precedent letter covering the possible consequences of homelessness.
- Cover the issue of potential homelessness in supervision of possession matters.
- Ensure that file-closing procedures pick up on this and, if not, that further advice to re-contact the organisation is given, if appropriate.

Homelessness

19. Has the client been advised in relation to the local authority's duties under the Homelessness Reduction Act 2017, whether upon or prior to homelessness?

Why does this matter?

- The client may not be aware of the local authority's duties under the HRA17, which arise even prior to the client becoming homeless.
- Local authority assistance may prevent the client's actual homelessness arising.
- The client will be better prepared to scrutinise any Personalised Housing Plan (PHP) before agreeing to it, understand the process for assessment and the limits of the relief duty, and provide better-quality instructions.
- The client may not meet all of the criteria so as to be owed a full housing duty, but may still be benefit from initial HRA17 assistance.
- The HRA17 duties may provide the client with interim relief.
- The client will know to act promptly if a decision is in need of challenge.
- An approach by the client under the HRA17 may alert the local authority to the client's impending homelessness and provide later support for any Part VII application.
- The client may need the time given under the HRA17 to arrange their affairs, upon becoming homeless.
- The adviser may not sufficiently protect the client's interests, by understanding and knowing when to challenge a failure-of-duty by the local authority, risking negligence and/or complaints.

How can I check this on my files?

- Is there an attendance note that deals with the HRA17 duties, at the relevant stage the client has reached?
- Is there evidence of advice having been given upon the instructions taken, including on timescales?
- Has the housing file been requested and are there copies of HRA17 decision-letters on file?
- Is there evidence of any decisions made by the local authority under the HRA17 having been considered and challenged, as necessary?
- Does the adviser demonstrate awareness of review time-limits?
- Has the local authority been written to regarding any decisions made, or failure to make any decision, under HRA17?
- Is there evidence of consideration of the appropriate means to challenge the local authority under the HRA17, whether by Judicial Review or other mechanism, and has this been advised on?

What will help?

- Consideration of the emerging caselaw in this developing area.
- Regular attendance at training seminars, to check for updates.

- Supervision to ensure that HRA17 decisions have been obtained and scrutinised.
- Diarise dates for challenging HRA17 decisions, PHPs and Reviews.
- Review the client’s PHP as the case progresses to check if it remains relevant.
- Where appropriate, guidance should be promptly sought from experienced Counsel.

20. Has the client been advised of the statutory criteria to be satisfied in order to access housing as homeless from a local authority, in particular those issues most likely to be in dispute?

Why does this matter?

- The client may not be aware of the issues surrounding eligibility and how they may become or remain eligible.
- The client may fail to understand what constitutes homelessness and at what point they can seek assistance.
- A client may be intentionally homeless without understanding why or how to break the chain of causation.
- The issue of priority need and supporting evidence may not have been explained and obtained.
- The implications and/or need for a local connection may not have been understood.
- The client may presume their entitlement to housing and/or accommodation of their choice.
- A client may not use all endeavours to prevent homelessness – e.g. clear arrears, curb behaviour, acceptance of offers.
- Incorrect advice may be given, having considerable adverse consequences for the client, and the provider may risk negligence.

How can I check this on my files?

- Is there a clear attendance note that correctly deals with each of the criteria?
- Have the criteria been applied to the client's circumstances, highlighting any that are most likely to be in dispute, or difficult to satisfy?
- Was advice on the statutory criteria confirmed in writing?
- Has the adviser sought to gather evidence that may strengthen the client's case, or inappropriately sent the client to do this themselves?
- Has the client been advised on issues relating to offers of accommodation – its duration, security of tenure, size, suitability and location?
- Are homeless clients being sent identical, generic advice letters?

What will help?

- Regular training and caselaw-checks to keep knowledge up-to-date and relevant.
- Early supervision on cases and thereafter at regular, key intervals.
- Easy access to reference materials. For example:
    - The most recent homelessness Code of Guidance for local authorities
    - Homelessness law text books and online materials
    - Housing Law Reports Quarterly Review, other subscriptions.
- Headings in template letters, prompting advisers to cover each issue.

21. Has consideration and advice been given as to the appropriate avenues for challenge at each stage of the client's case, including that of Judicial Review, with Counsel's Advice sought, where appropriate?

Why does this matter?

- The adviser needs to be alert to the overlapping duties on the local authority and the different modes of challenge, at each stage.
- The client needs to be aware that they must reasonably co-operate with the local authority and comply with their PHP, so as not to prejudice their homeless application.
- The client may not understand that a PHP and subsequent decisions can be challenged, if inappropriate, but generally within time limits.
- The client will not otherwise understand the different methods for challenge and why the process may be lengthy.
- A client may otherwise make rash decisions – e.g. refusing Bed & Breakfast or other offer of accommodation – which may prejudice their case.
- The client may not understand appropriate timescales for temporary accommodation.
- The client may otherwise fail to seek legal advice within the 21-day time limit for a request for review of a negative decision and/or for any appeal to the County Court.
- The client may not realise that any application for Judicial Review and/or appeal to the County Court must be based on a point of law, not simply a disagreement with the decision reached.
- The client may become street-homeless by missing a statutory deadline, or by an ill-advised refusal.
- All of these concerns may lead to a complaint of negligence against the adviser and/or devastating consequences for the client.

How can I check this on my files?

- Is there a clear attendance note of instructions and advice at each stage of the homelessness process?
- Is there evidence of adviser-scrutiny of PHPs, decision-letters etc, checking for both inaccuracies and technical deficiencies, and are decisions challenged?
- Has advice at each stage been confirmed in writing – i.e. upon any application/decision/review request/review decision/Judicial Review/County Court appeal?
- Has a linked file, whether using Legal Help or certificated funding, been opened to deal with further challenges?
- Has realistic advice as to merits, strengths and weaknesses been given?
- Does advice provide a procedural time-frame or estimate at each stage?
- Has any duty or discretion to provide accommodation been explained to the client?
- Has the effect of any refusal of accommodation been explained?
- Have any potentially complex issues, been referred to Counsel, to inform advice given?

What will help?

- Ensure advisers have a precedent client letter or checklist to refer to, once a Part VII application to a local authority has been made.
- Ensure advisers have (outline) precedent letters to local authorities, requesting the homelessness file, a review of the decision (full grounds can follow later) and interim accommodation.
- Establish the practice of local authorities in the area – e.g. of extending temporary accommodation pending review decisions, the placement of applicants in- or out-of-borough, the length of (family-)placement in B&B – to provide realistic advice to clients.
- Be prepared to challenge poor decision-making at all stages, potentially on an urgent basis.
- Have good access to source materials.
- Maintain good relationships with Counsel to provide emergency advice, where necessary.
- Key dates should be noted in the adviser's diary and centrally within the organisation – e.g. shared computer diary – and advised to clients.
- Know the appropriate means of funding for each stage of the case: be familiar with the Funding Code.
- Consider any other social care duties that may apply to the client and any household members, evidencing advice on these.

22. Has an appropriate expert report, opinion and evidence been sought to properly advance the client's case?

Why does this matter?

- Clients need to be aware that expert evidence may be required to support their case, not just their viewpoint and instructions put forward.
- On some eligibility issues, immigration knowledge or Counsel's Advice may be required, as this can be a complex area.
- Evidence on the condition of a former property may support that it was no longer reasonable to occupy.
- Expert evidence will often clarify whether an issue is arguable – e.g. did the client lack capacity to form any intent to their homelessness, are they in priority need, is a property suitable in medical/disability terms?
- Disbursements are wasted on expert evidence that merely recites the nature of the homeless person's illness, without addressing it to the criteria.
- There may be witnesses willing to give statements in support – e.g. any acts of violence leading to homelessness.
- Timely Counsel's Advice may provide guidance and support for a next step or for Legal Aid, or warn against it, tailoring the client's expectations.
- Without such evidence a case may be weak and less likely to succeed.
- The client is reliant on the adviser to use their best endeavours in pursuing the case and any reasonable lines of argument.
- The adviser risks negligence if the appropriate evidence has not been sought.

How can I check this on my files?

- Do attendance notes/instructions indicate a need for expert evidence?
- Has an expert been (properly) instructed by the adviser?
- Does medical evidence address a causal connection between the physical/mental/emotional disability of the client and its exacerbation by being street-homeless and/or in unsuitable accommodation?
- Is the definition of priority need and/or the test for capacity or other criteria, clearly and correctly set out in any letter of instruction to an expert?
- Has the availability of non-expert evidence been explored and obtained, relevant to the issues at stake?
- Are clients being routinely and inappropriately sent to gather their own evidence?
- Has any evidence obtained been considered, instructions sought upon and used to further the client's case?

What will help?

- Empathetic understanding of the client's problems will assist in getting better-quality instructions from the client and guide the adviser on what further evidence is required.
- Clear explanations at appointments and in attendance notes are particularly important because the homeless client may not receive or understand letters – e.g. if the client is of no fixed abode, or has limited

English – and appreciate the limited timeframe within which to obtain supporting evidence.

- Advisers should lead on prompt evidence gathering.
- Advisers should have a clear understanding of when an expert should be instructed and who and how to instruct, with supervisors supporting disbursements as necessary.
- Expert- and other non-expert evidence should seek to address the point which is the subject of dispute: letters sent and questions asked should therefore give guidance and be specific.
- Expert reports should be checked, clarification sought of the expert (if required), and reports discussed with clients before disclosure.
- Further representations to accompany the expert’s report, witness or other evidence, and to add the client’s further instructions, may be required.
- Make reference to experienced Counsel where clarification of the legal position or merits is required.
- Organisations should not operate a “blanket ban” on incurring the costs of expert disbursements, but should familiarise themselves with the applicable LAA rates payable.

23. Has the client who fails to meet the Part VII criteria as homeless been advised of alternative remedies with regard to community care and children's legislation?

Why does this matter?

- It is important to take a holistic view of homelessness and explore all solutions.
- Alternative remedies are sometimes available to clients who would otherwise face street-homelessness.
- Failure to consider alternative solutions indicates a lack of knowledge and/or experience in homelessness cases.
- It may lead to a failure to seek remedies to which the client is entitled and place a vulnerable client or family at risk of street-homelessness.
- Client will not know of these additional routes where other avenues have failed.
- Private accommodation with (non-Housing Department) assistance from other local authority departments may be the client's only option to prevent street-homelessness.
- The Housing Department may not make the appropriate referral to Adult or Children Social Services, who in turn, may not provide the proper support, without pressure from the adviser.

How can I check this on my files?

- Do attendance notes and letters of advice show clear advice on alternative routes and remedies towards housing, at the appropriate time?
- Has a relevant referral for assessment been made by the provider?
- Has the matter been followed-up and any unreasonable refusal to assess or provide appropriate services (which may include housing) been challenged, if need be by use of the Judicial Review Pre-Action Protocol?
- Has Counsel's Advice been sought, where appropriate?
- Where a remedy via the local authority cannot be pursued, has the client been advised of other, general housing options?

What will help?

- Specialist training in this linked area of "community care" law.
- Easy access to reference materials.
- Correspondence should be cross-checked with attendance notes to make sure no alternative solutions have been missed.
- This issue should be covered in supervision.
- Close liaison with Social Services, both vulnerable adults & children's departments, at the relevant local authority – have precedent referral and/or JR protocol letters to hand.
- Liaison (where possible) with family and community care departments in-house, or other external agencies.
- If the adviser lacks the necessary expertise in this area, either this should be confirmed in writing and a referral made, or the advice and guidance of experienced Counsel sought.
- Having a list of referral agencies and experts.

24. In appropriate cases, has the adviser consulted a current copy of the Allocation Scheme of the relevant local authority?

Why does this matter?

- Post-LASPOA, advice on this issue is most often in the context of homelessness/suitability.
- The Allocation Scheme may deviate from the statutory obligations set out in Housing Act 1996, and any decision which is not in accordance with either the published Allocation Scheme or the legislation is illegal.
- As a public body with statutory functions (i.e. the allocation of housing) a local authority (or social housing provider) must carry out such enquiries as will enable them to properly discharge those functions.
- In some cases, there may be scope for discretion: an adviser should scrutinise whether this has been considered by the housing provider and exercised fairly, logically, transparently and without unlawful discrimination.

Failure to consult a current copy of the scheme may mean:

- The client is wrongly advised in respect of their application for an allocation and/or any assessment of suitability.
- The client may not have been advised of their right to challenge an allocation decision by way of internal and/or Judicial Review.
- The client may not have been made aware of the procedure and any time constraints on a request for review of an allocation decision.
- The client may not have been advised of the possibility of later applying for a mutual exchange/management transfer, where applicable, as an alternative to initial refusal.
- An unlawful policy or practice goes unchallenged.
- The housing provider may be obliged to consider offering alternative accommodation, and examination of the scheme may provide grounds to explore this issue.
- Advisers leave themselves open to complaints and possible negligence claims.

How can I check this on my files?

- Allocation Schemes should be provided free of charge and made available online – is there a copy on the file or clearly referred to on the file?
- Is there evidence of adviser-scrutiny of the scheme, and questions or challenges raised, where appropriate (e.g. has the scheme been updated in line with legislative changes)?
- Do attendance notes show that the client has received clear and comprehensive advice on whether the scheme lends support to their client's case, or has otherwise been appropriately applied?
- Does written advice to the client advise on relevant sections of the Allocation Scheme and any avenues for challenge, tailored to the client's situation.

What will help?

- Keeping a record of the Allocation Schemes of relevant local authorities and updating them regularly to improve knowledge and quality of advice.
- Checking with other advisers who may know of individual practices and features of particular Allocation Schemes.
- Explaining the issues in writing to the client, so they understand them and can make informed decisions about their allocation options and any suitability challenge.
- Being aware of the possibility of a Judicial Review challenge for non-compliance with allocations law and schemes.
- Consider seeking Counsel’s Advice where a challenge by way of JR may be an option.
- Keeping a record of review deadlines.

Disrepair

25. Does the adviser have good knowledge of the pre-action protocol in disrepair cases, demonstrating when to apply it, and how and when it may not apply?

Why does this matter?

- This can suggest a lack of knowledge or experience of disrepair litigation, which may prejudice conduct of the case and the client's claim, amounting to negligence.
- Incorrect advice may be provided to the client about the merits and conduct of their case, and claims may not be brought where and when they should.
- A failure to comply with the protocol may lead to a landlord refusing to respond and/or the client being penalised in costs by the Court in any later proceedings.
- The refusal of applications for Legal Aid, in cases that qualify, may result.
- An adviser's lack of knowledge may cause unnecessary delay in urgent cases, where timescales should be adapted.
- This may cause delay in dealing with proceedings involving a counterclaim, if the adviser is not aware that the protocol does not apply.

How can I check this on my files?

- Has the adviser considered and provided accurate advice on the pre-action protocol?
- Has the adviser complied with the pre-action protocol, where appropriate?
- If the adviser has not complied with the pre-action protocol, have they provided good reasons for this and shown awareness of any exclusions to compliance?
- Have standard protocol letters, as set out in the CPR, been used, where appropriate?
- Has action following the protocol, such as the use of an expert, been taken?
- Have applications for Legal Aid been refused due to a failure to follow the pre-action protocol or to make clear why it did not apply?

What will help?

- Provide advisers with training on the pre-action protocol and any exemptions to its use (e.g. Counterclaims).
- Ensure that advisers have access to the pre-action protocol and standard letters that they can tailor to the client's case.
- Maintain and update a register of suitable experts, together with CVs.
- Cover this issue in supervision.
- Ensure advisers demonstrate awareness of the criteria for Legal Aid in disrepair matters and that file-notes reflect these.

26. Has the client been advised on whether the defects alleged constitute disrepair, how and whether they might be actionable, on limitation and on the range of possible remedies?

Why does this matter?

- Simply reciting the s11 or Health Housing & Safety Rating Standards (HHSRS) criteria is insufficient – the criteria should be applied to the facts.
- A client needs to understand that not all defects are actionable, and not all by the same route.
- There may be measures the client can take to help alleviate the problem.
- The client should be given an idea of the urgency of the case and the effect or need for any delay.
- Client-expectation needs to be managed on what outcomes can reasonably be achieved and over what timescale.
- It might only be possible to assist the client with any urgent/injunctive action – if so, the client needs to be aware that they can pursue a damages' claim in person (or using alternative funding): ensuring the client is aware of the statutory time limitation will be essential.
- Full and proper advice will help prevent damaging negligence claims, particularly where claims may be of higher value.

How can I check this on my files?

- Have instructions been taken chronologically, from the first alleged incident, detailing when it was reported and its duration, and client-losses?
- Have instructions been taken on any injury or health-related issues linked to the defects alleged, which may affect limitation and the remedy sought?
- Have the s11 criteria been applied to the facts and nature of the defects complained of?
- Has the tenancy been considered: its repairing obligations may be wider than s11?
- Have the HHSRS been considered and the local authority contacted for any records of their involvement?
- Has the client been advised on what defects may be actionable, the works that appear to be necessary, any need for expert evidence in any Court proceedings and the potential for an injunction and/or damages?
- Has the client been fully advised on the range of available remedies?
- Where there is any doubt on the nature, cause of or liability for a defect, has an expert been instructed to inform advice?

What will help?

- Have a precedent advice letter, using headings under which the adviser must give advice.
- If a case is advised to be urgent, ensure advisers act accordingly.
- Give clients realistic advice about the actions, options and funding available, as early as possible.
- Seek to instruct an expert to inspect the property, to report and preserve evidence, especially where this may be necessary in order to confirm or inform any advice.

27. Has the adviser appropriately responded to the urgency, severity and health-impact of the disrepair alleged, including obtaining relevant records and expert evidence?

Why does this matter?

- The client may be living in potentially dangerous, health-hazardous and/or unsanitary conditions.
- The client's health and/or circumstances of their household, may be a factor supporting urgency, severity etc.
- The client's losses may be greater if urgent steps are not taken – e.g. to restore a safe electricity supply, stop a roof leaking.
- Even in cases where the matter may not go on to a Legal Aid certificate, the matter may be urgent due to limitation: the adviser should respond accordingly.
- The adviser should recognise that a matter may be urgent where steps to preserve evidence must be taken.
- These issues broadly correspond to those the adviser needs to address to obtain Legal Aid funding.

How can I check this on my files?

- Consider the period from the date of instructions to the date of the next action to progress the matter.
- Has the client been advised on the urgency of the matter and the evidence required in support?
- Has a protocol letter been sent, if necessary, abridging the time for response?
- Has an appropriate expert been urgently instructed to inspect the property, not just reliance placed on the local authority Environmental Health Department?
- Have the local authority been contacted for any records of their prior involvement, or to instigate their involvement and service of any Notice ?
- Has medical evidence or evidence of injury been sought and obtained, as to any health effects/hazards, on relevant household members?
- Where serious/dangerous defects have been alleged, has the adviser taken any steps towards obtaining injunctive relief/specific performance?

What will help?

- Take full and clear, chronological instructions from the client at the first interview, including as to any health issues affecting the client and/or household members who may be adversely affected by the defects.
- Have available a list of suitable experts/surveyors that advisers can call on at short notice to carry out inspections, at Legal Aid rates.
- Have a template "urgent" protocol letter to send opponents and experts.
- Write off promptly for medical evidence and/or records, drawing the expert's attention to the defects alleged and invite opinion.

- Draft a client statement, setting out their evidence and instructions, which can be used for any Legal aid application, as well as an initial draft of a statement for Court.
- Make enquiries of the local authority and encourage the client to do so, but do not solely rely on this method for obtaining evidence and for urgent action to be taken.
- Know when delegated functions can be used and utilise certificated Legal Aid, in appropriate cases, to apply for injunctive relief.
- Ensure, insofar as possible the defects or hazards have been fully identified, distinguishing those that might warrant injunctive relief, even if any issue as to other works and compensation remain outstanding.

28. Where appropriate, has certificated funding been sought to pursue injunctive relief?

Why does this matter?

- A delay in obtaining Legal Aid can leave the client and family members compelled to live in substandard, dangerous and miserable housing conditions.
- It is important advisers understand the inter-play between any initial enquiries, perhaps to ascertain the urgency or severity of the matter, using Legal Help, and cases where Legal Aid should be used.
- Clients can become disillusioned that there is nothing that can be, or is being, done and are more likely to complain or cease giving instructions.
- Some properties, particularly those in the private sector, may be being routinely let in poor condition: pursuing an Order from the Court may be the only way to ensure the property is brought to required standards, and the client obtaining Legal Aid may be the only way to achieve this.
- Private landlords, in particular, may seek to force tenants out of their homes, rather than carrying out works, unless compelled to do so.

How can I check this on my files?

- Have advisers applied the Funding Code to grant/apply for certificated funding?
- Have injunction proceedings been raised and followed through, from service of the letter of claim?
- Have clients been deterred from seeking Legal Aid and/or diverted elsewhere inappropriately – e.g. told to pursue eligible claims through the Environmental Health Department at the local authority?
- What has the outcome been of any application made for certificated funding?
- What has the outcome been of any application for an injunction and/or specific performance?
- Has the action taken by the provider resulted in an improvement of conditions for the client and their household?

What will help?

- Ensure advisers know when delegated functions can be used and utilise certificated Legal Aid, in appropriate cases, to apply for injunctive relief (Advisers should not be deterred from obtaining Legal Aid through lack of understanding of what it covers).
- Advisers should exercise delegated functions in cases that merit, ensuring they clearly state how the criteria are met.
- Ensure clients are not advised that Legal Aid is no longer available for disrepair cases, without elaboration, as this is inaccurate.
- Use evidence to supporting any application for Legal Aid and/or injunctive relief – whether from experts, client photos/videos, receipts etc.
- Know the applicable Legal Aid rates for experts to prevent funding difficulties.

- Ensure, insofar as possible, the defects or hazards have been resolved by the end of the case, even if any issue as to compensation remains outstanding.

Unlawful Eviction

29. Has the adviser analysed the facts, including the nature of the tenancy, to ascertain whether the eviction was lawful, and advised the client accordingly?

Why does this matter?

- Clients do not always understand the possession process and/or appreciate the significance of steps the landlord may have already taken and of the documents they may have received.
- Clients who share accommodation with their landlord may not know that the full possession process does not apply to them.
- Clients may not have received or may have lost documents regarding possession/the eviction.
- A landlord may have had to secure the property and/or change the locks in the tenant's absence, due to an emergency – e.g. fire or flood.
- It is essential to establish the facts surrounding an eviction, whether one has actually occurred and if it has been lawful, in order to fully and accurately advise the client of any potential remedies.
- Some landlords (often in the private-sector) routinely unlawfully evict and should be held accountable for their actions.
- Any assistance offered by the local authority may only be temporary.
- Clients may be entitled to considerable compensation, which may assist in covering the expenses resulting from unlawful eviction and/or replacing lost belongings.

How can I check this on my files?

- Has the adviser taken full instructions on the type of tenancy, the landlords' details and the events leading up to the alleged eviction?
- Has the adviser made prompt enquiries of the landlord and obtained documentation to ascertain whether possession has been gained lawfully?
- Has the adviser considered any resident-landlord exemption?
- Has advice been given on what the correct process for possession, in the client's circumstances, would be?
- Have documents been scrutinised and their validity considered?
- Has the client been advised on the range of possible remedies?

What will help?

- Taking and recording full and clear instructions on the eviction and any events or threats leading up to it, from the outset – this can be time-consuming, but take as much time as needed.
- Advisers should understand the possession processes applicable to tenants, and to lodgers/licensees.

- Do not place unreasonable requirements on the evicted client to produce documents that may have been left or locked in the property from which they were evicted.
- Where there may be doubt or an absence of documents, advisers should make prompt enquiries of the landlord, agents or other relevant third parties.
- Ensure, where clients may be of no fixed abode resulting from their eviction, that advice at the first interview is fully recorded, is as definitive as possible, and that arrangements have been made to meet again, or for the client to collect a letter of advice, or to send it to a reliable care-of address.
- Consider drafting a statement or proof of evidence for the client, while details are fresh, as this may save time later, should Court action prove necessary.

30. Has the adviser appropriately responded to the urgency of the matter?

Why does this matter?

- Unlawful eviction matters are almost always urgent.
- The client and/or their family may have nowhere to go that night and may already be “sofa-surfing”.
- The client may have nothing other than the ‘clothes on their back’ and/or need urgent access to medication or other items.
- The longer the client is out of their home, the more it is likely to become a permanent exclusion.
- A client should generally seek to mitigate their loss: it is the adviser’s responsibility to guide and assist them in so doing.
- Urgent steps may be necessary to ensure the client’s home has not been and is not re-let, and/or their belongings disposed of or otherwise unlawfully interfered with.
- Urgent action may prevent permanent loss of the client’s home/belongings.

How can I check this on my files?

- How long was it between instructions and the next action taken?
- Have any initial enquiries – e.g. of the landlord – been made whilst the client is in the adviser’s office for the first interview?
- Where appropriate, was the landlord placed on immediate written notice?
- Has injunctive relief been (promptly) sought, including re-entry and restoration of belongings, where possible?
- Have any interim arrangements been made for where the client will stay until the matter can be put before the Court, as needed?
- Has preliminary homelessness advice been given, with liaison by the adviser with the local authority?
- Where appropriate, have delegated functions been used?

What will help?

- Have good internal procedures to support advisers that take on such cases at short notice.
- Have Counsel available, at the end of the phone or by email, to advise, draft documents and/or attend at Court, where the adviser may not be able to do so.
- Have draft precedent letters (to landlords), statements of case and/or Injunction Orders to hand.
- Know the arrangements at the local County Court for issuing urgent applications and appearing before the ‘District Judge of the Day’.
- Use certificated Legal Aid to pay Court fees and other necessary disbursements – do not expect clients to pay these.
- Be prepared to promptly serve any Order obtained personally on the landlord, and to conduct any follow-up work ordered by the Court.

31. Has the adviser considered and given an appropriate period of notice to the landlord or justified why not?

Why does this matter?

- The landlord, in particular a private landlord, may not realise that their actions are unlawful.
- A formal letter from an adviser, setting out the position, may quickly resolve the matter, and avoid unnecessary stress and expense for the client.
- A recalcitrant landlord may, on notice, urgently seek to re-let the property as a means of making the exclusion permanent.
- The client may have already notified the landlord, had a response and have evidence of this (e.g. text or email messages).
- The appropriate notice will vary from case-to-case, according to the client's circumstances and the consequences of the eviction on him/her.
- The adviser will need to demonstrate notice or explain why in any Legal Aid application and/or to the Court

How can I check this on my files?

- Have instructions been taken on any contact/response from the landlord surrounding or since the eviction?
- Has the adviser weighed up and recorded reasons for giving or not giving the landlord advanced notice of the claim?
- Is there a well-drafted letter before claim on file – setting out the events, the legal position, the client's position, any actions already taken, the required response, remedies sought and consequences if not?
- Has the adviser appreciated the urgency – e.g. for the client, the children of the family – of regaining entry to the client's home and belongings?

What will help?

- Take and record very clear and detailed instructions, at the first interview, of any contact there has been with the landlord since the eviction and the response: this may establish notice and can be included in a statement from the client.
- In some cases, a phone call by the adviser to the landlord may be sufficient to establish the landlord's attitude to the eviction, re-entry and/or client-access to belongings.
- Weigh the need for notice against "tipping off" the landlord.
- Ensure attendance notes record the steps taken and why – e.g. if no or very short notice is given: the adviser may need to give a statement attesting these events.
- Once a view has been formed, advisers should act decisively.
- Make use of delegated functions to cover the costs of the urgent work required, including injunctive relief, the issue of proceedings and Counsel's fees, if necessary.

32. Has the adviser taken appropriate steps to obtain injunctive relief, both in respect of re-entry and to protect and preserve the client's belongings?

Why does this matter?

- Injunctive relief, swiftly obtained, may be the only way to prevent an unlawful eviction becoming permanent and the landlord benefiting from the unlawful act.
- In cases where the eviction is unlawful, prompt action to obtain re-entry, prevent re-letting and re-unite the client with their belongings, might only be secured by injunction.
- Applying for interim relief may at least preserve the status quo, whilst further enquiries are made.
- Even where the eviction may have been lawful and the property re-let, it may still be necessary to obtain an injunction for the return of the client's belongings.
- Swift and decisive action may prevent the client suffering the full effects of homelessness.
- Clients may not have received or may have been deprived of documents regarding the eviction.
- Clients will have belongings that cannot be valued in monetary terms or easily replaced.

How can I check this on my files?

- Where initial contact with the landlord/agents has not remedied the problem, have steps to prepare an injunction application been promptly taken?
- Has an injunction application been issued and an expedited or same-day hearing been requested?
- Has the adviser agreed or sought an Order that preserves the client's actual or potential right of re-entry, pending any final determination by the Court?
- Has an agreement or Order for access, keys or the return of belongings been sought?
- Have letters to the client and/or the landlord set out the case-circumstances and any further action to be taken within a prescribed timescale?

What will help?

- Ensure advisers consider all aspect of the client's case and what practical steps need to be taken on the client's behalf.
- Make a list of urgent remedies required – e.g. providing the client with a set of keys – and those that can be resolved later, as the case progresses – e.g. damages.
- Be prepared to act swiftly: supervisors may need to support junior advisers, as these cases are "front-loaded", especially if Court action cannot be avoided.

- Draft a statement on behalf of the client as soon after the first interview as possible, in readiness for any injunction application.
- Ask (or assist) the client to draft a list of belongings left in the property – sometimes doing this room-by-room helps with what can be a very onerous task.
- Be familiar with the Funding Code so that delegated functions can be appropriately used, to avoid delay.

33. Has the client been advised and assisted, using certificated funding where needed, to pursue all appropriate remedies, including an award of damages?

Why does this matter?

- The initial steps to obtain re-entry or access to belongings for a client, do not necessarily mark the end of the case.
- Unlawful eviction claims can attract considerable damages.
- Clients will often report belongings damaged or missing.
- Clients have often experienced considerable expense, as well as inconvenience, during any period of absence.
- Certificated funding is intended to be available to pursue all aspects of an unlawful eviction claim, including damages.
- Errant landlords may only amend their behaviours if a financial penalty is imposed, and enforced, as necessary.
- Advisers may face negligence claims and/or complaints, which are time-consuming to investigate and potentially substantial in value.

How can I check this on my files?

- Does the adviser demonstrate an awareness of both the issues an injunction may remedy and those that may require an award of damages to remedy?
- Has the adviser applied for funding or exercised delegated functions, to cover all steps in any proceedings, whether under cover of the emergency or the substantive certificate?
- Have proceedings been issued, where the matter cannot be settled without so doing?
- Have proceedings, including claims under all appropriate heads of damages and costs, been properly drafted, making use of Counsel where necessary?
- Has the adviser agreed or sought an Order that preserves the client's actual or potential right of re-entry pending any final determination by the Court, unless this is not possible?
- Has an agreement or Order for access or the return of belongings been sought?
- Have clients been advised of the right to pursue a damages' claim and that Legal Aid is available to do so?
- Has representation up to and including trial been provided under Legal Aid, where such funding is available and the matter cannot otherwise be settled?

What will help?

- Take and record full and detailed instructions, if needed be over the course of several attendances, but preferably at an early stage.
- Advise the client, at an early stage, to make a list of and keep receipts for any expenses – e.g. for room-and-board, food/take-away expenses, additional travel, (temporary) replacement belongings.

- Advise the client to make a list, room-by-room, of any items lost, damaged or destroyed, giving approximate ages and values for each.
- Support the client with the above tasks, as they may be in a state of shock and distress, and therefore more disorganised than usual.
- Have information on the availability, cost and appropriateness of CFAs and/or ATE insurance, which may assist in securing certificated Legal Aid beyond any injunction.
- Ensure advisers are properly trained to recognise all aspects of an unlawful eviction claim and guided on the appropriate content and amount of any negotiated settlement.
- Seek advice from experienced Counsel in drafting documents, on heads of claim and quantum, where necessary.
- Know the Funding Code and provide information in any Legal Aid application that demonstrates the criteria is met.
- Exercise delegated functions to deal with the urgent aspects of the case but include in the substantive application cover for the steps required thereafter.


Review