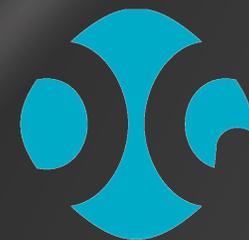


A Guide to Peer Review Mental Health



DGLEGAL

15 September 2020

Agenda

- Introduction to the Presenters
- Why and how the Peer Review system was brought in by the LSC
- An overview of the Peer Review process
- What Peer Reviewers look for
- Examples of good & poor practice
- The importance of using high quality template attendance notes & letters (but of course are then tailored to the client's case)
- Questions & Answers

Presenters

David Gilmore

David has provided advice and assistance to hundreds of law firms and other legal organisations. He delivers specialist consultancy and training on a wide range of topics including business management & strategy, tendering, compliance and quality assurance.

Professor Avrom Sherr

Avrom is the principal architect of a system of assessment of legal competence known as Independent Peer Review. Since 2002 this has been used as the system for assessment of the quality of publicly funded work in the UK, ensuring the quality of legal services received by the public, and he leads the operation of this work.

Tam Gill

Tam is a mental health law solicitor, with a particular focus on forensic mental health law and practice. Tam is ranked in Chambers 2019 as a Band 1 lawyer for Healthcare: Mental Health. As well as representing clients, Tam also holds positions of Law Society Mental Health Panel assessor, Peer Reviewer and Independent Costs Assessor for the LAA.

Max Duddles

Max set up and runs Mander Cruickshank Solicitors' mental health law department. A specialist in the process and procedures surrounding mental health and mental capacity legislation, Max is also regularly asked to deliver training to legal professionals, as well as professionals in the health and social care sector.

PEER REVIEW AND QUALITY FOR DG LEGAL WEBINARS 2020



Lawyers: The Quality Agenda, 1992

- N.B. Franchising plus already in place
- Reprise: Inputs, Structure, Process, Outcomes
- Peer Review - tried and untried
- Model Clients?
- Triangulation of approach
- Transaction Criteria

Quality and Cost

- 1997-2000
- The Team~
- 100 solicitor firms
- 43 Not-For-Profit
- 142,975 cases - 82,705 completed
- Randomised controlled trial, “gold standard”.
- 4 payment groups:
 - 1.Green Form
 - 2.Fixed sum
 - 3.Fixed no+sum
 - 4.NFP 1100hrs
- *BriefCase*; Peer Review; Model Clients; Client Survey

STRUCTURE

INPUTS

OUTPUTS

PROCESS

Library
Education
STRUCTURE

Qualification
Training
Licensure

INPUTS

Contacts
Experience
Property

Knowledge
Equipment

Skill sets
IT

PROCESS

OUTPUTS

Supervision
Management Allocation
STRUCTURE
Library
Education Training Systems
Qualification
Training Licensure
INPUTS
Contacts Experience Property
Knowledge Equipment
Skill sets IT

Supervision
Management Allocation
STRUCTURE
Training Systems

Advice
Fact Gathering Correspondence
PROCESS Client Handling
Strategy Decisions Advocacy
Legal Analysis Performance Practice Management

Sentence
Financial Action
Private Inaction
OUTPUTS
Public Political
Social
Damages

Advice
Fact Gathering Correspondence
PROCESS
Strategy Decisions Advocacy
Legal Analysis Performance Practice Management
Client Handling

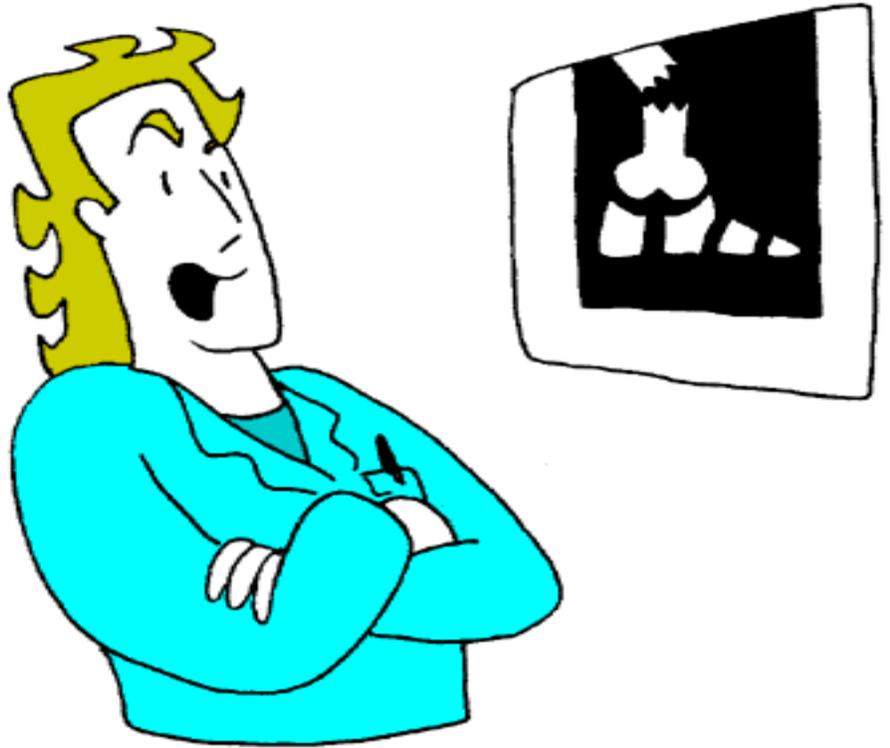


Peer Review in “Quality and Cost”

- Peer Rev. Mark 2
- 718 cases
- 55 contractees
- 5 work areas
- 173 double marked
- 18 PR/ MC cases
- Selection; training; criteria; sample; monitoring.



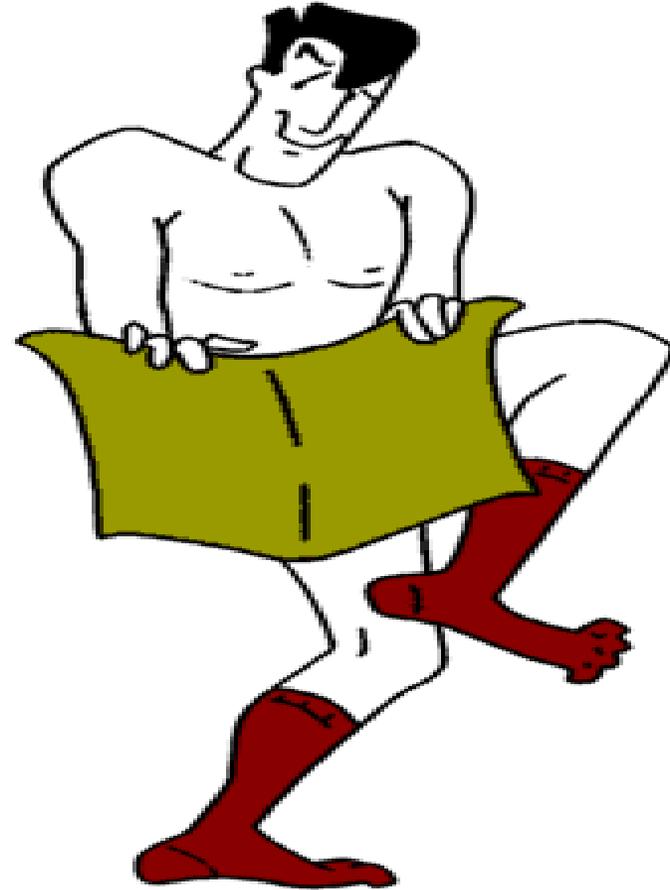
Peer Review cont.



- Reliability:
 - of instrument
 - of reviewers
 - ditto inter se
 - rating contractees
- Conclude:
 - Double mark
 - Whole Org. only

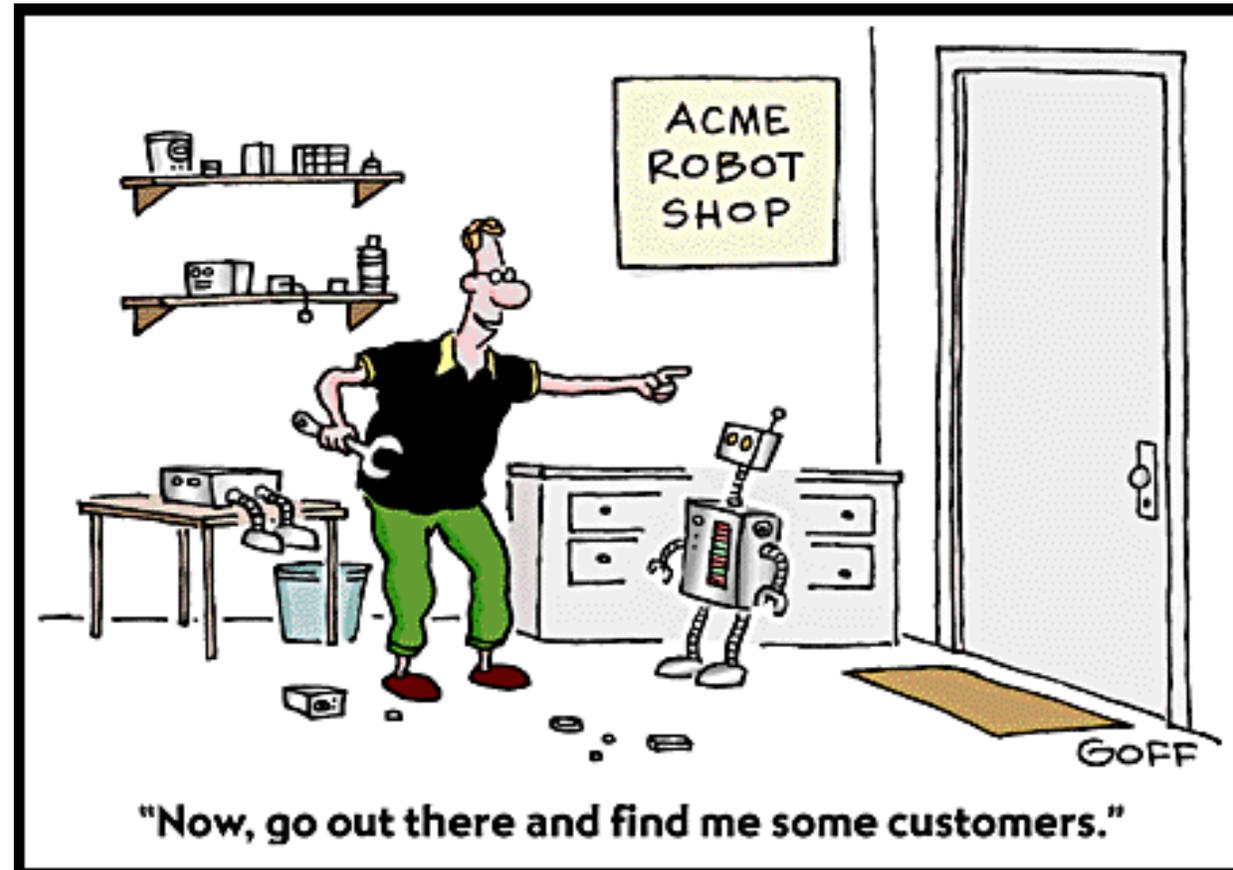
Peer Review results (ii)

- Solicitor vs NFP
- + financial results
- Time per case
- 3 peer reviewers
- Cases <99 days
- PI and Housing
- Region (L' pool)



Model Clients and Peer Review

- 45 visits (1/3)
- Groups, regions, work categories
- Service: access, quality of advice+ immediate follow-up
- 1 visit, 1 adviser
- Debt, employment, housing. PI.



Model Clients Results

- Access difficulties: -
 - initial contact -
 - appointments -
 - advice -
 - advice system

- Quality via MC/PR: -
 - incomplete
 - cf: MC & PR
 - inaccurate
 - impractical
 - woolly
 - confusing contradictory
 - inappropriate

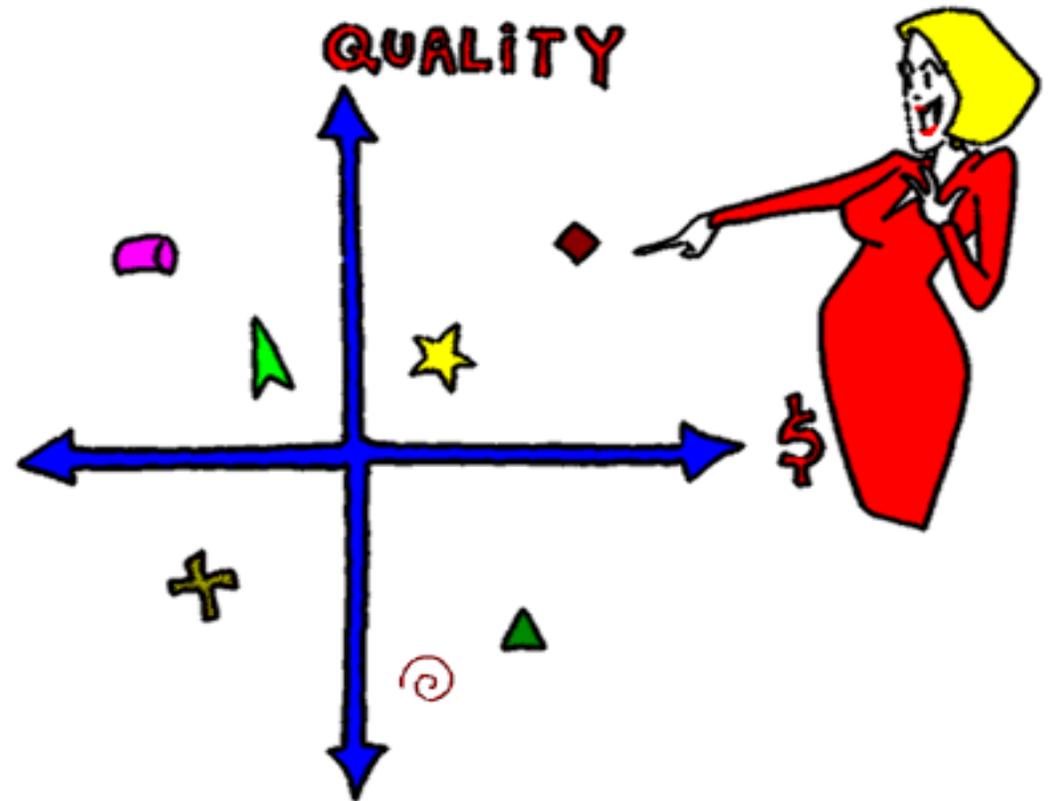
Model clients - example

Model client: “The adviser showed an impressive level of concern for my job security, understanding that I could not afford to lose my job. Made a point of telling me that it can be quite common for part time women workers to encounter unfair bosses because they know how much they need the job and think that they will be able to get away with it (i.e. treating them unfairly). Overall he was very helpful, reassuring and personal...”

Peer reviewers: “Although very clearly empathetic, this adviser does not really know enough about the law to be using legal aid money. A good example of touchy feely advice.”(PR4)

Quality interrelating

- Clients
- Model Clients
- Peer Review of MC
- Outcome Measures: -
+financial result
- Case profiles, e.g.:
 - court
 - disability
 - adversarial



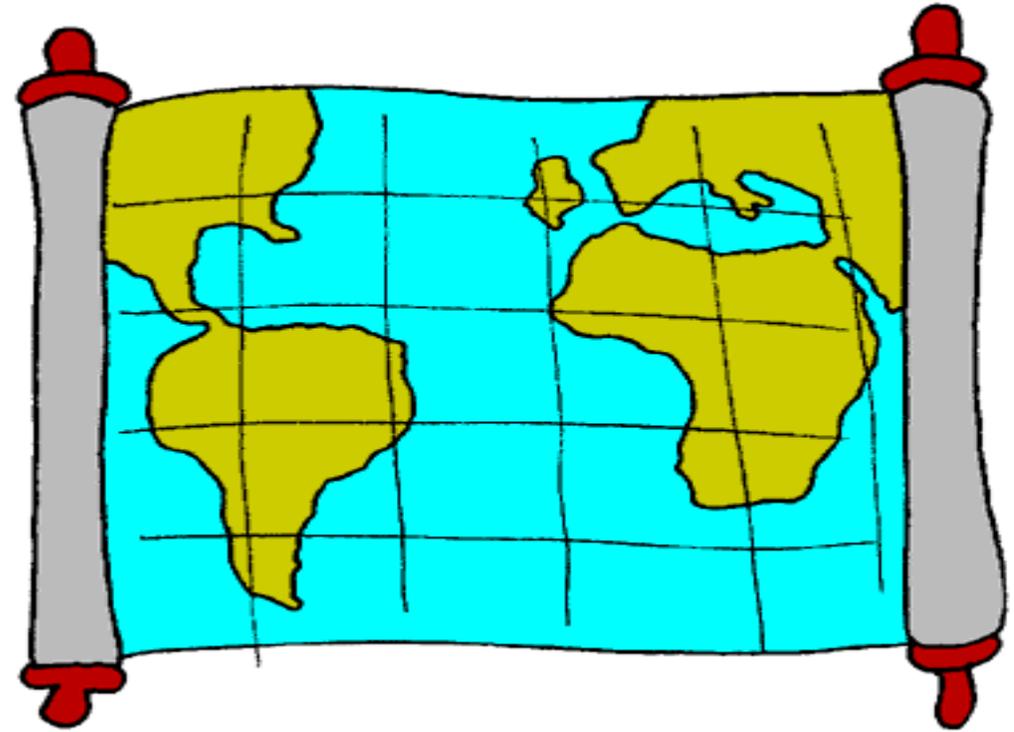
Quality futures



- Peer Review: - two track:
 1. Random
 2. Targeted
- - sensitive implementation
- Cf: - Cost
 - TCs
 - Compliance

Peer Review in Operation

- Selection
- Training
- Criteria
- Sample
- Monitoring
- 1. Random



2. Targeted

Peer Review- Became Used for:

- Tolerance
- Model Clients
- Welsh Pilot
- Preference
- Concordance
- Summary Reports
- Analysis
- Support and Target
- “Certificated” work
- All Family
- All civil areas
- Crime
- P R P R
- Consistency
- Trial
- Preferred Supplier

The Civil Criteria



The Gradings



- 1 = Excellence
- 2 = Competence Plus
- 3 = Competence
- 4 = Below Competence
- 5 = Failure in performance

Please circle one only

1 2 3 4 5

1 2 3 4 5

1 2 3 4 5

1 2 3 4 5 N/A

1 2 3 4 5 N/A

Y N

Further Comments

A. Communication with the Client:

1. How well does the adviser appear to have understood the client's problem
2. How effective were the adviser's communication and client-handling skills?
3. How effective were the adviser's fact and information – gathering skills?
4. How effectively was the client informed of:
 - a) the merits (or not) of the claim, and
 - b) all developments?

B. The advice:

1. How legally correct was the advice given?
2. How appropriate was the advice to the client's instructions?
3. How comprehensive was the advice? (For Family, see below)
4. Was the advice given in time/at the right time?

C. The work/assistance

1. If no other work was carried out, was this appropriate?
2. If any further fact-finding work was carried out
 - a) how appropriate and
 - b) how efficiently executed was the work?
3. If any other work was carried out
 - a) how appropriate and
 - b) how efficiently executed was the work?
4. How effective in working towards what the client reasonably wanted/needed was any further work carried out?
5. If no disbursements were incurred was this appropriate?

6. How appropriate were any disbursements incurred
7. Where this is necessary did the adviser consider/advise on/act on an effective referral?
8. Throughout the file how effectively did the organisation use resources?
9. Did the adviser or their work in any way prejudice the client?
10. If yes, provide details.

B.3 Family

- a) How comprehensive was the advice in relation to divorce?
- b) How comprehensive was the advice in relation to children?
- c) How comprehensive was the advice in relation to ancillary relief?
- d) How comprehensive was the advice in relation to injunction?
- e) How comprehensive was the advice overall?

Overall mark

1 2 3 4 5

Please detail any further necessary comments.

Criteria Guidance for each discipline

- Specific guidance written for reviewers by reviewers.

What Peer Reviewers look for

- How can you improve your quality?
 - How can (and do) you provide the best service for your client
 - How is this evidenced on your files
- With reference to the “Improving Your Quality In Mental Health” – the Peer Review Guidance (PRG)
- Starting point – the Contents page of the PRG
- The rest of the PRG gives guidance / examples of how you can evidence your work

Why do we do this?

As Practitioners:

- To ensure that we are giving the best quality advice to each client
- To carry out our client's instructions
- To ensure that all legal issues relevant to the retainer are addressed, and advice is given in a way that the client is able to understand
- To achieve the best outcome for the client

Why do we do this?

As Peer Reviewers:

- To ensure that we are giving the best quality advice to each client
- To carry out our client's instructions
- To ensure that all legal issues relevant to the retainer are addressed, and advice is given in a way that the client is able to understand
- To achieve the best outcome for the client

What do Peer Reviewers look for?

- Evidence!
- Refer back to the PRG Contents page
- Looking at the first 12 files out of the 15 (taken in listed order) you have been asked to submit for Peer Review
- Look at each file individually
- Take the sample as a whole
- Exercise judgement; one size does not fit all cases – each client and their circumstances is different

How do Peer Reviewers write the report?

- Look for evidence
- Rate each file
- Rate the whole sample
- Write a report with examples given for each conclusion reached

The report

Sub-headings in Peer Review report:

- **Positive findings** – what you are doing well
- **Major areas of concern** – where has the client been put at detriment; what is a major fault noted; omissions etc
- **Other areas of concern** – not so severe as MAOC, but the work could be done better
- **Areas for development** – suggestions on how things could be improved more
- **Further comments** – minor issues that do not affect the quality of the work, but have been noted by the Peer Reviewer – e.g. outdated terminology
- **Suggested areas for Improvement** – addresses MAOC, OAOC - this is where you are given guidance and suggestion for what you need to do to improve your quality

The Ratings - 1 – Excellence

Indicators of excellence in the standard of work include:

- Clients' instructions are fully and appropriately recorded.
- Communication, advice and other work are tailored to each individual client's circumstances.
- Clients are advised correctly and in full.
- All issues are progressed comprehensively, appropriately and efficiently.
- There is a demonstration of in-depth knowledge and appreciation of the wider context.
- There is excellent use of tactics and strategies, demonstrating skill and expertise, in an attempt to ensure the best outcomes for clients.
- The provider adds value to their case, taking a fully proactive approach.
- There are no areas of major concern.

The Ratings - 2 – Competence Plus

Indicators of Competence Plus in the standard of work include:

- Clients' instructions were appropriately recorded.
- Advice and work is tailored to the individual client's circumstances.
- Clients are advised correctly and in full.
- Issues are progressed comprehensively, appropriately and efficiently.
- Tactics and strategies are employed to achieve the best outcomes for clients. The provider adds value to cases and take a proactive approach.

The Ratings - 3 – Threshold Competence

Threshold Competence is the standard that meet that required by the standard terms. Indicators of Threshold Competence in the standard of work include:

- Clients' instructions were appropriately recorded.
- There is adequate but limited communication with client.
- The advice and work is adequate, although it may not always be extensive and may not deal with other linked issues other than the presenting issue. There may be areas that the provider will need to address in order to progress towards Competence Plus (2) or Excellence (1).

The Ratings - 4 – Below Competence

- ❁ Information is not being recorded or reported accurately.
- ❁ Communication with the client is sometimes of poor quality.
- ❁ The advice and other work is adequate.
- ❁ Some cases are not being conducted with reasonable skill, care and diligence.
- ❁ The timeliness of the communication, the advice or other work is sometimes inadequate.
- ❁ There are lapses below the required standard.

The Ratings - 5 – Failure in Competence

- ❁ Information is not being recorded or reported accurately.
- ❁ Communication with clients is often of poor quality.
- ❁ Cases in general are not being conducted with reasonable skill, care and diligence.
- ❁ The timeliness of the communication, the advice or work is often inadequate.
- ❁ There is a detrimental service to clients, or there is no meaningful service at all, or there is a service that leads to potential prejudice against the client.

Examples of good and poor practice

General points:

- Carrying out client's instructions fully
- Giving full (and preferably accurate) advice on all legal issues and matters relevant to the case
- Evidence of what has been done – and an explanation of why something hasn't been done, i.e. explain what was considered and either carried out or not – at the material time

Good practice...

- Being proactive – driving the case
- Thinking about your client as an individual
- Spotting issues - and dealing with them
- Corresponding with third parties – RC, social worker, Nearest Relative, Ministry of Justice, other solicitors involved in the case
- Full preparation – section papers, CPA meetings, previous files (if relevant), medical notes (meaningfully reviewed), criminal papers
- Full advice – including eligibility / expiry dates, s117 advice (if relevant), powers of the Tribunal (accurate to client's circumstances)
- Evidencing the work done – and the “quick file pick up test”

Poor practice...

- ❖ Not being proactive – not driving the case
- ❖ Not thinking about your client as an individual
- ❖ Not spotting issues - and not dealing with them
- ❖ Not corresponding with third parties – RC, social worker, Nearest Relative, Ministry of Justice, other solicitors involved in the case
- ❖ No full preparation – section papers, CPA meetings, previous files (if relevant), medical notes (meaningfully reviewed), criminal papers
- ❖ No full advice – including eligibility / expiry dates, s117 advice (if relevant), powers of the Tribunal (accurate to client’s circumstances)
- ❖ Not evidencing the work done – and the “quick file pick up test” is not met

The importance of using high quality template attendance notes & letters

If It Isn't Written Down Legibly, It Didn't Happen

- Consider your files the same way you would consider medical records.
- All relevant facts and discussions amount to evidence that you are doing things properly.
- Contemporaneous notes are the best notes.

Bespoke or Pro-Forma?

- One size does not fit all.
- Think about the contents of your documents / letters.
- Think about the timing of your advice (e.g. independent experts).

Common Pitfalls

- ❖ Failure to record when or how initial contact was made.
- ❖ Merits of case advice given in initial client care letters and nothing afterwards.
- ❖ Getting the law wrong (because the pro-forma gets the law wrong).

Common Pitfalls

- ❁ Quality, not quantity.
- ❁ No witnesses (expert or non-expert).
- ❁ Requests for medical / social services / CMHT notes not made or chased.

Tips and Useful Guidance

- Consider using workflows.
- Encourage staff to think for themselves.
- Encourage document authors to think about content.
- Supervise properly.

Any Questions?

Thanks for watching!

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