

A Guide to Peer Review Family



DGLEGAL

27 October 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 do 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.

Louise Garner

Louise undertakes all aspects of children law including care proceedings, adoption and Special Guardianship, as well as dealing with clients subject to Domestic Violence. In 2018 Louise was granted Higher Rights to advocate in the High Court and continues to undertake more complex cases, now being able to conduct all the advocacy, regardless of the level of court.

Jon Platt

Jon is a Solicitor specialising in Children and Family law. He is widely respected as a legal authority in the North West region and provides expert coaching and advisory services to law firms seeking advice about Peer Review or legal development.

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

STRUCTURE

Library

Education

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

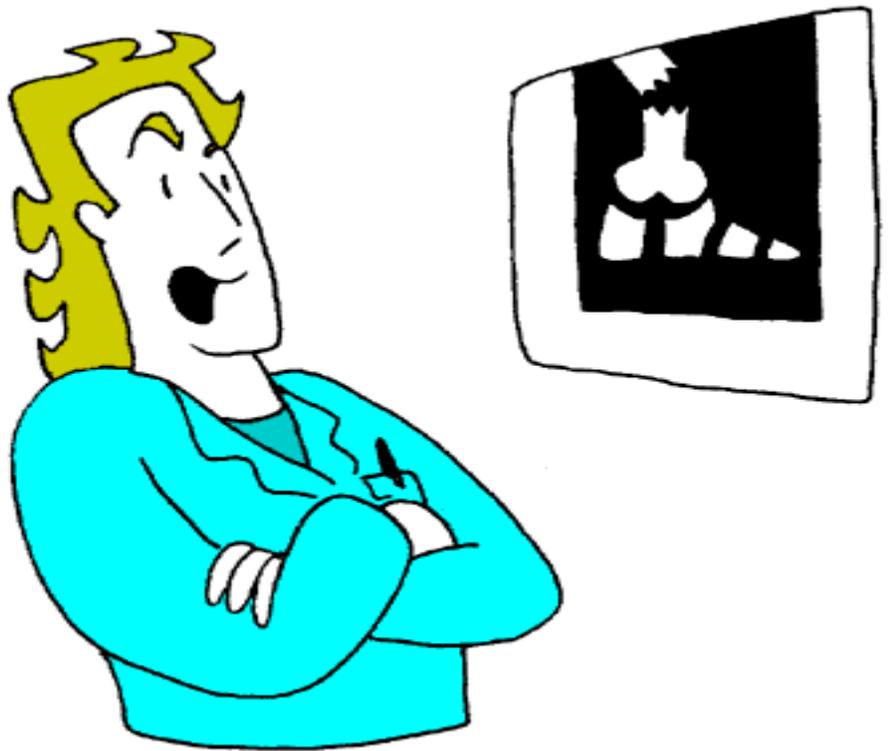


Peer Review in “Quality and Cost”

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



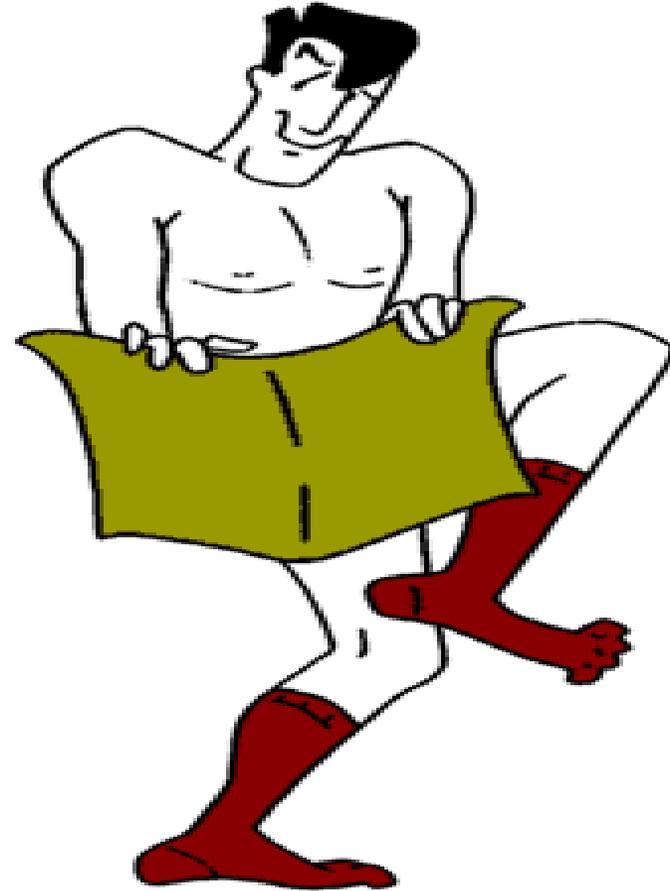
Peer Review cont.



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

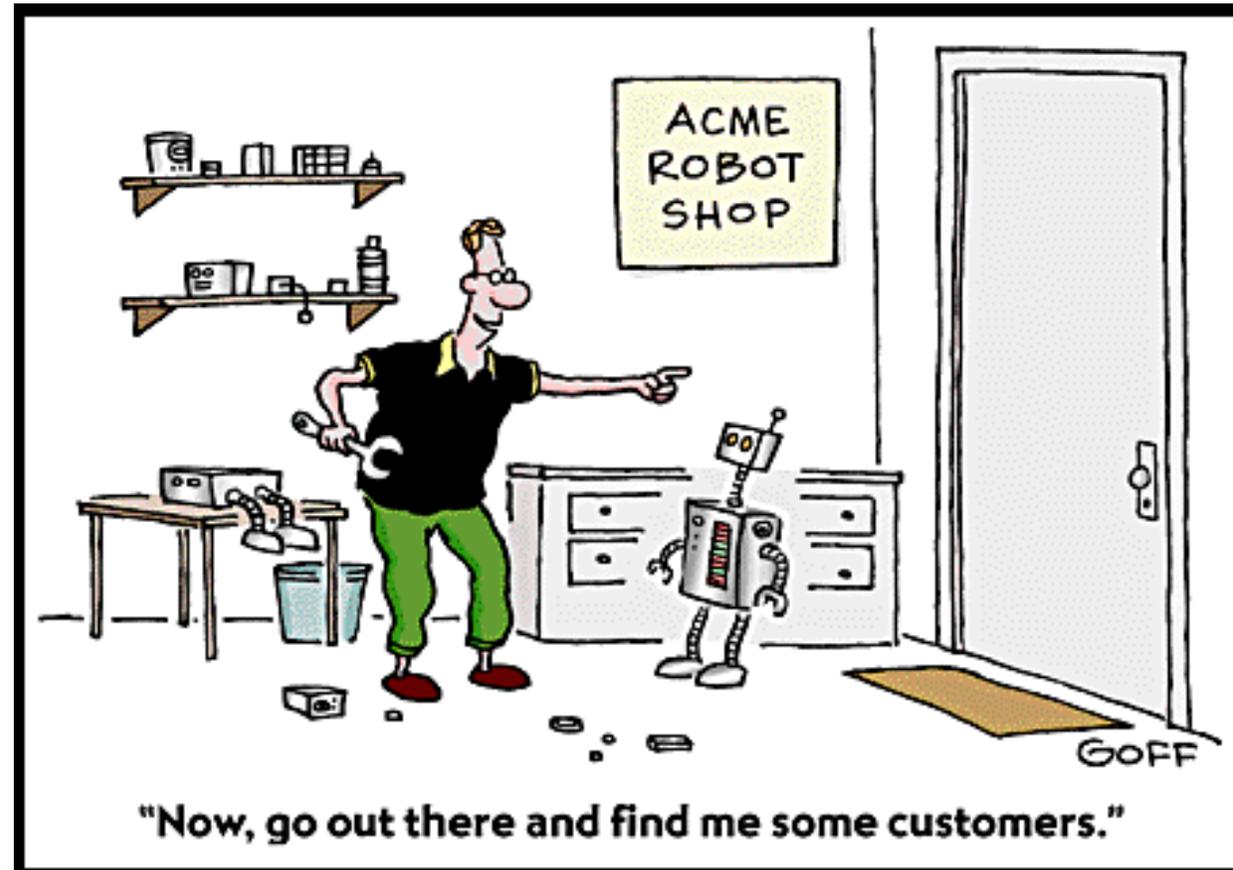
Peer Review results (ii)

- 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

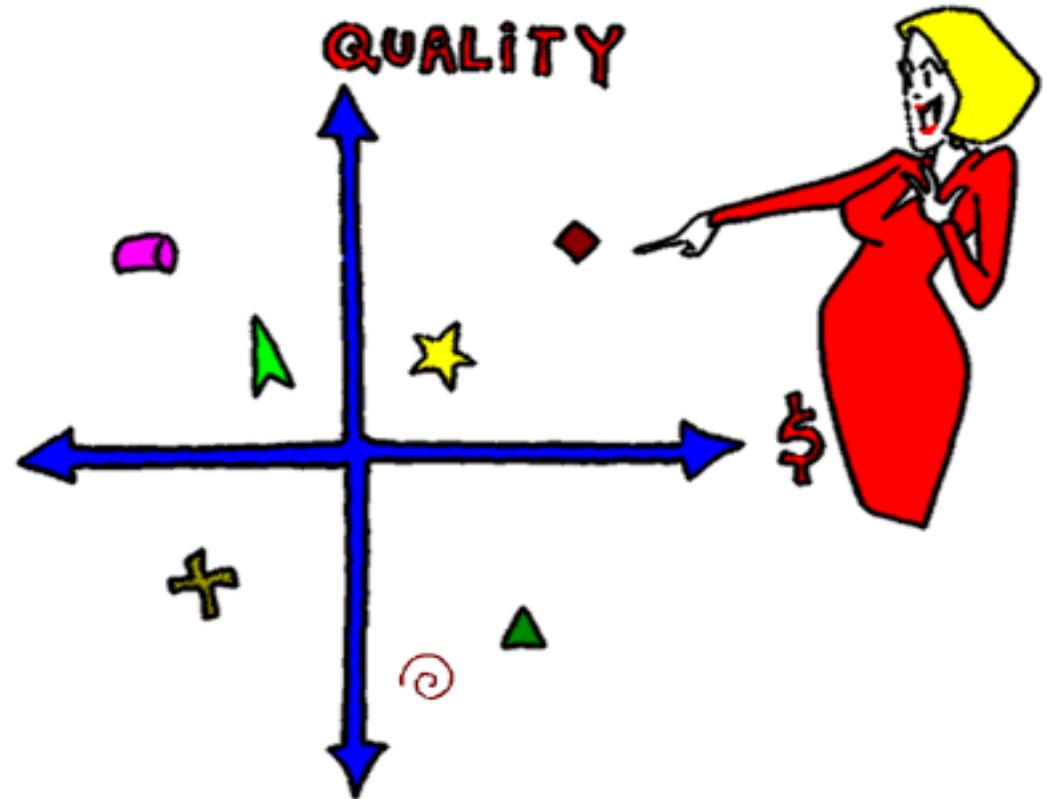
Model clients - example

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



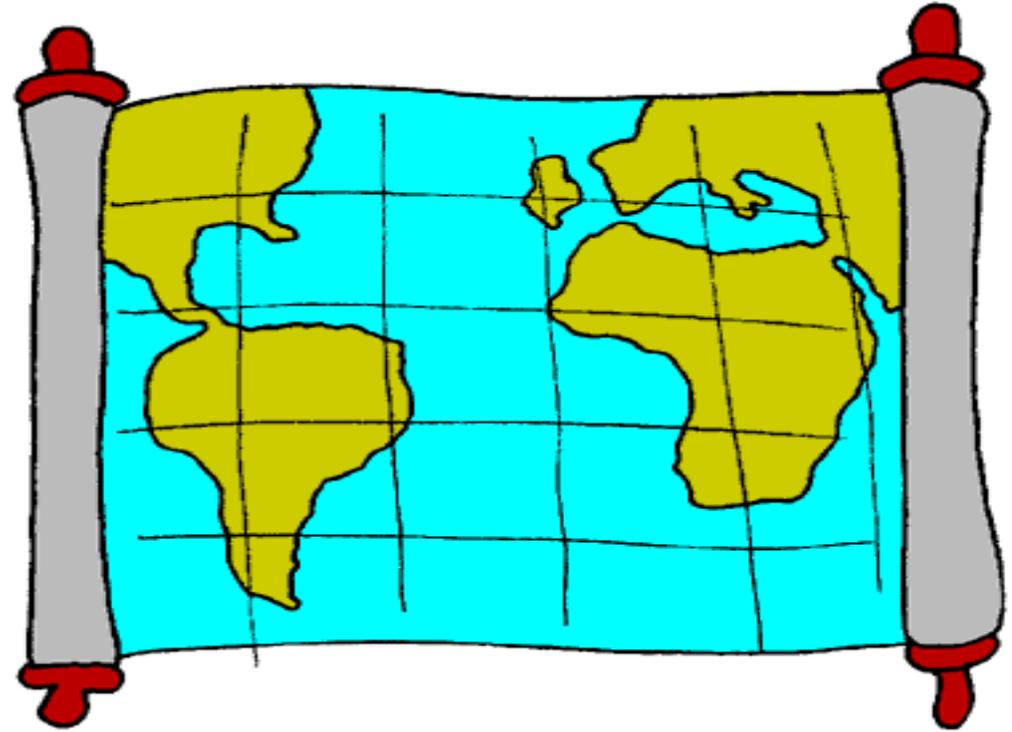
Quality futures



- 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 do Peer Reviewers look for?

Who are Peer Reviewers?

How do we review?

Improving Your Quality in Family – Guide

What do Peer Reviewers look for?

Information to answer the questions in the Criteria Guidance

- Evidence

- What does a Review Entail?

- 15 files – mixed

 - Linked files

 - 12 reviewed

Headings in the Report

- Positive Findings
- Negative Findings
 - Major Areas of Concern/Areas of Concern
 - Other Areas of Concern/Areas for Development
 - Further Comments
 - Suggested Areas for Improvement

Leading to the rating for the review

Examples of good and poor practice

Improving Your Quality in Family

A Guide to common issues identified through Peer Review

General Themes

The importance of using high quality template attendance notes & letters

Example Initial Attendance Note

Deborah Bradshaw - 25TH JUNE 2020

Attended Client to take instructions for proposed divorce on the grounds of her husband's unreasonable behaviour.

Client's full name is Deborah Anne Bradshaw (nee Hopley)

DOB 11.7.81

Address 5 Ogden Lane, Halifax HA2 7LX

Telephone 01244 328967/ 07239765422

E-mail : DebbiBrad72@talktalk.net

Her Husband is Christopher Bradshaw (31.1.58) now living at 23 Station Road, Sowerby Bridge Calderdale HX2 6BM

E mail address not known

In previous proceedings he was represented by Cuddles & Co of Leeds.

There are 2 children of the family:

Rachel Bradshaw (26.3.06) and

Edward Matthew Bradshaw (3.2.2008).

Her husband is Edward's father

Rachel's father is Mark Heginbotham who she thinks lives in Manchester. It was a one night stand and he has never seen Rachel. His name is not on her birth certificate and he probably doesn't know of her existence. Rachel thinks that Christopher Bradshaw is her father.

In the past there has been some involvement with Social Services. Initially this was due to Rachel's behaviour which became very difficult, almost uncontrollable, when the marriage broke down in 2017, but things settled down and there are now no problems with Rachel or Edward. They are both in good health and doing well at school. Rachel will do her GCSEs next year and wants to go to college to train as a car mechanic. Edward is on the school football team.

The children have alternate weekend staying contact with their father from Friday evening until Sunday afternoon. The pick up and drop off venue is Deborah's mother's home in Copley. This may change now that the injunction has expired. Deborah is happy with these contact arrangements. The children seem to enjoy seeing their father. Edward likes his father to watch when he plays football. Rachel doesn't say very much about contact, but she doesn't complain and is always ready to go.

Example Initial Attendance Note Continued

Social Services were again involved with the family last year following a violent incident which led to injunction proceedings. Deborah was badly assaulted by her husband at a wedding party for the son of a mutual friend and which they both attended. Deborah says that they had both had too much to drink. Her injuries were serious enough to require a hospital attendance and four stitches to a cut over eye where he had butted her. The scar is still visible. Deborah retracted a complaint to the police, but following pressure from Social Services, she applied for and obtained a 12 months non-mol injunction which will expire on 29th June 2020. She was then represented by Fobsters of Rochdale. There have been no other family proceedings and Deborah does not recall being advised by Fobsters on any other aspect of her family circumstances.

Her husband has not breached the non mol order, and they now enjoy a minimal but reasonable relationship, with very little direct contact between them.

Deborah and the children live in the matrimonial home and her husband continues to pay the Halifax mortgage instalments of about £150 per month. Deborah regards this as his financial contribution for the children, instead of maintenance. From time to time he also buys the children things, including clothes and equipment for school. Apart from this Deborah's only income comprises Income Support and Child Benefit. She is thinking of getting a part time job as a cleaner.

The house is in their joint names and Deborah estimates that it is worth about £150,000. She believes that the outstanding mortgage is in the region of £55,000, but it may be more if any instalments have not been paid by Mr Bradshaw.

Deborah has not made a will. If she died she would like her sister, Geraldine to look after the children, and she would want all of her estate to be divided equally between the children.

Deborah would be willing to go to mediation if there was a problem over the children or the house. She does not feel intimidated by her husband.

Advice to Client

I advised Deborah that as she was in receipt of income support, and because she had obtained an injunction against her husband last year, she would be entitled to free Legal help under the Legal Aid system. She gave to me documentary evidence in support.

Divorce: I advised Deborah that she would be entitled to petition for divorce on the grounds of her husband's unreasonable behaviour, which could refer to his excessive drinking during the marriage, his interest in pornography, the violent incident last year and his womanising. I advised that he was unlikely to defend the proceedings and the process would take about 6 months. In view of the relatively harmonious relationship between them however I suggested that it might be more appropriate to see if he would consent to a divorce on the grounds of their two years plus separation. Deborah agreed to this, and has instructed me to write to him or his solicitors on this basis. Deborah will let me have her marriage certificate. She will make a further appointment when we receive her husband's consent to divorce.

Children: I advised Deborah that Rachel and Edward were both children of the family and that her husband had parental responsibility for them. I explained to her that in the absence of any obvious problem there was no need to obtain court orders for either child. I expressed concern about Rachel's indifference to contact, and I asked if she thought that this might be linked to her husband's interest in pornography, or any other aspect of his behaviour. She didn't think so, but she will speak to Rachel's social worker (she still has one) about this.

Example Initial Attendance Note Continued

I advised Deborah that both children are now old enough to make clear their wishes and feelings about contact. I handed to Deborah a copy of the Welfare Check List and explained to her that although there was no “parental right to contact”, contact was generally viewed as being in a child’s best interest. I suggested that with assistance and guidance from Social Services Deborah may need to discuss with Rachel both contact and also, more importantly, the question of her paternity.

I advised Deborah that Rachel’s misconception about the identity of her father was something upon which she needed to take expert advice as soon as possible. From my limited knowledge of such matters I expressed my concern that it was a potential emotional time bomb for the child and that it needed to be handled sensitively and with expert help. Deborah said that she would discuss it with the Social worker, and possibly her doctor (who is also Rachel’s doctor). She doesn’t want me to write to anyone or do anything about it.

The Matrimonial Home: I advised Deborah that as a joint owner she and her husband would get ownership of the house if the other died first. I explained to her the benefits and risks of severing the tenancy. We agreed that he is likely to die a long time before Deborah. He’s a lot older than her, he’s significantly overweight, and he drinks and smokes heavily. She’ll think about it and we’ll discuss it later.

I advised that in the circumstances I did not feel that it would be proportionately beneficial to her to apply for a transfer of the house into her sole name. Although the children’s needs were the most important factor there was still no guarantee of success in such an application, particularly as there was presently no threat

from her husband of seeking a sale. I advised that the statutory charge might apply if she secured more than her present one half share.

I advised that she would be able to prevent her husband securing a sale of the house against her wishes for as long as it was needed to provide a home for the children. I handed to Deborah a copy of the section 25 criteria and explained that in the absence of exceptional circumstances the Court adopted a policy of dividing matrimonial property between the parties on a 50:50 basis. Deborah hadn’t thought of applying to get more than her half share of the house, and didn’t want to.

Other Financial Provision: Deborah feels that her husband’s present payments for the mortgage are all that she wants. I advised that in the absence of more information about finances it was impossible to advise on how much she might get if she applied for maintenance for herself. She is aware that she can apply through the Child Support Agency for the children, but does not wish to do so. She gets by ok now and doesn’t want to rock the boat. If / When she starts work she will reconsider the position. I advised that in any case it would be necessary to get details of her husband’s finances before taking any action. Deborah has no plans to remarry!

Domestic Violence: There have been no further incidents and no breaches of the injunction. Deborah will wait to see if things change when the order expires, and will not hesitate to instruct me to apply for a fresh order if he causes any trouble.

Example First Letter to Client

Deborah Bradshaw

Dear Deborah

Re Domestic Matters

I refer to our recent meeting and I thought it would be helpful to write to you to confirm all that you told me, my advice to you, and the steps which we have agreed that I will take on your behalf.

I attach an attendance note of our meeting. You will see that this is a record of our discussion and I would like you to let me know immediately if there is anything in it which is wrong, or which you do not understand.

I hope that the following summary of our discussion will assist you:-

Divorce

I attach an information sheet about divorce proceedings which sets out the procedure in an undefended divorce case. We have agreed that I will write to your husband to ask if he will consent to a divorce on the grounds of your separation for two years. If he agrees to this I will prepare your divorce petition and the other papers which have to be filed at Court. If he doesn't agree, then I will prepare a divorce petition on the grounds of his unreasonable behaviour. In the meanwhile you have said that you will bring your marriage certificate to the office. The divorce petition will not be issued until you have signed it, and I will let you know when we can make an appointment

for this purpose.

I have advised you that even prior to the issue of divorce proceedings, you should make a will particularly for the purpose of appointing your sister as Guardian for the children.

Domestic Violence

Following a violent and drunken assault last year, you obtained an injunction against your husband to prevent him from threatening, assaulting or bothering you. Since the injunction there have been no further incidents, and, from a distance, you have developed a reasonable relationship with him. That injunction is however about to expire and you have told me that you do not wish to seek a fresh order. I have advised you that, in the circumstances, you would, in any event, be unlikely to obtain a fresh order against him. If your husband's behaviour deteriorates after the order has expired, then you must contact me immediately.

Your Children

In relation to Rachel and Edward you told me the following:-

- (i) The contact arrangements which you have agreed with your husband are working well,
- (ii) he has never questioned the children living with you, and
- (iii) you do not wish to seek any further financial assistance from him.

Example First Letter to Client Continued

In the circumstances I have advised you that there is no need to take any proceedings in connection with the children, although they will be referred to in the divorce. I have concerns about some aspects of the arrangements for the children and these are contained in the attached attendance note. I strongly advise you to speak to Rachel's social worker about the things that we discussed, i.e. the question of her paternity, and also your husband's historical interest in pornography.

For your assistance I have attached some information about Parental Responsibility, and also a copy of the Welfare Check List which sets out the factors which the Court will consider in cases concerning children. You will see that the first of these is "The child's wishes and feelings". I confirm that in view of their respective ages any proceedings concerning Rachel and Edward would be largely determined by what the children themselves each wanted!

Let me know immediately if any problems arise in relation to the arrangements for the children.

The Matrimonial Home

The house in which you live with the children is in the joint names of you and your husband. Your husband continues to pay the mortgage instalments. For the reasons which are contained in the attached attendance note, I do not advise you to take any proceedings in relation to the house. I have also advised you that it is more likely to

be in your interest that you do not sever your joint ownership of the property.

For as long as the house is needed as a home for your children, and until they are at least 18, or even possibly 21 years, it is most unlikely that the Court would order a sale of the house against your wishes. I have advised you that if the House was ever the subject of Proceedings it is likely that the Court would simply order that the net proceeds of sale should be divided equally between you.

Other Financial Matters

You are presently in receipt of income support and other benefits. The only assistance you receive from your husband are his payment of the mortgage instalments and occasional purchases which he makes for the children. You have told me that you do not want to seek any more financial assistance from him.

In the absence of information about his financial circumstances it is difficult to advise as to whether or not this is a reasonable arrangement. From what you have told me it seems likely that his financial position is worse than when you were living together. If that is the case then an application to the Court for maintenance or other financial relief, may not be proportionate or worthwhile.

Example First Letter to Client Continued

If however you should have reason to believe that his financial circumstances are better than you presently think, or if for any other reason you wish to reconsider this, then do not hesitate to contact me. For your assistance I enclose also a summary of the factors which the Court will take into account in cases concerning matrimonial property and finance.

In the circumstances of your case I have advised you that unless you are considering re-marriage there is little purpose in obtaining a “clean break order” - which would prevent either of you from making a financial claim against the other in the future.

Legal Aid and Costs

As you have given to me a letter from the DSS which confirms that you are in receipt of income support, and because you obtained an injunction against your husband last year, I am entitled to assist you in your proposed divorce under the Government’s free Legal Help Scheme. I have attached some information about this. Please note however that you must let me know if there is a change in your circumstances, if for instance you obtain employment and/or cease to be in receipt of income support.

The Statutory Charge

As you do not intend to issue proceedings in relation to the

matrimonial home, or seek any other financial provision from your husband, this is not presently a case where the Legal Aid Statutory Charge is likely to apply. If however you change your mind and decide to seek a financial or property order against your husband then you may become liable to repay your all of your Legal Aid costs out of any property you recover or preserve in those proceedings. This is called the Legal Aid Statutory Charge. It is difficult to anticipate how much those costs would be until we know the nature of any proceedings which you might decide to take. I will advise you upon this in more detail if in the future you decide to seek a financial order against your husband.

I hope that together with the attached information sheets, and the lengthy attendance note of our meeting, the above is of assistance to you. By separate post I am also sending to you some information about our firm and the general conduct of you case. If you have any queries about any of the letters and information which we send to you, then do not hesitate to contact our office.

Yours sincerely

Any Questions?

Thanks for watching!

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