

Skills Element Interviewing, Advising and Communicating	Learning Outcome Interviewing
Evidence Provided: <ul style="list-style-type: none"> • Draft driver Aide Memoire • Attendance note of meeting with Driver and brother dated 12 January 2022 	Page in Portfolio 61 65
<p>How does this meet the outcome?</p> <p>Prior to any interview meeting with a client, I usually draft an aide memoire. I have drafted a template Aide Memoire which I amend for each case. Typically, I like to have this document to hand during the interview and refer to it to ensure that I have covered everything. On some occasions I might not have the document physically to hand, but the fact that I have drafted it before the meeting provides me with a structure for the interview and helps me to remember all the points we need to cover.</p> <p>The attendance note provided as evidence demonstrates my interviewing skills. Having introduced myself, I set out my role and experience and confirmed that the discussion would be privileged. I then set out an itinerary for the meeting. I demonstrated empathy by asking the client how he was feeling and showing sensitivity. I provide reassurance from the outset in respect of criminal liability and what the prosecution has to prove in order to find that an offence is made out.</p> <p>The client was very comprehensive in his account of what happened and he provided a full and detailed statement. Throughout the interview stage of the meeting, I asked appropriate initial questions and then sometimes follow up questions to probe further. I established a good rapport with the client and, although not directly relevant to the matter at hand, showed interest in his life and work. This is a natural part of the process to me and how I engage with people. Throughout the interview, I was alive to what parts of his account could be scrutinised by the police and so questioned him further on those matters. For example, he was used to working long hours and having only 6 hours sleep a night. I was keen to explore whether this caused him to be tired and he confirmed that this was manageable to him and that he had no sleep issues.</p> <p>One of the concerns in this case was that the client was connected by mobile phone to a work colleague in China at the time that he collided with a pedestrian stepping into the road. This was very likely to be a key concern for the police to investigate and so I asked several subsidiary questions on this point so that I was clear about his account on this.</p> <p>The interview was structured appropriately, and it flowed in a conversation style. At one point the client became visibly upset when providing explicit detail and so we paused for a couple of minutes for him to settle.</p> <p>Following the interview I provided appropriate advice and at the end of the meeting asked if the client had any queries. I then set out next steps and thanked him.</p>	

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Opportunity for further development, (if any)

I like to adopt a conversational and natural style when interviewing clients rather than a typical interview approach. I have identified that sometimes this causes me to skip over certain lines of questioning and this is an area I intend to work on. I have identified several online courses and am planning to attend one or more of these next year to improve my interview skills.

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Skills Element	Learning Outcome
Interviewing, Advising and Communicating	Advising and Communicating
Evidence Provided: Attendance note dated 17 July 2023 – Oral Advice Letter dated 13 June 2023 – written Advice	Page in Portfolio 86 78
<p>How does this meet the outcome?</p> <p>Attendance note</p> <p>I represented a client charged with fail to provide a specimen for analysis. A preliminary hearing date had been listed. I arranged a meeting so that I could advise him regarding the hearing, in particular, to agree a strategy and to obtain his instructions.</p> <p>During the meeting, I provided structured advice to my client, commencing with the current position in the case and the offence he faced. I advised the defendant that he had no prospects of defending the matter and the sentence that would follow a guilty plea by reference to the sentencing guidelines and my opinion on where the offence sat and likely penalty which would include a mandatory disqualification.</p> <p>I then provided the suggestion of an alternative strategy which, if successful, would provide us with a mechanism to present a “special reasons” argument to the court to avoid a disqualification. This would require his agreement to plead guilty to an alternative offence and that this would have to be agreed by the prosecution. I advised the client on what constitutes “special reasons” as defined by case law and applied this to the defendant’s case. I confirmed my view that the client had a strong set of facts in respect of raising special reasons but throughout the meeting emphasised that I could not guarantee that, first, the prosecution would allow it and, second, that the court would accept it.</p> <p>I set out the ramifications of going down this route, potential sentencing options available to the court and financial implications including fine and costs. We discussed the mitigating and aggravating aspects of the case and the underlying and wider issue of substance abuse as a coping mechanism for grief and relationship breakdown. I did not patronise or condescend the client (diversity issues) and was able to point him in some direction for professional help in respect of bereavement.</p> <p>Having provided clear advice on all relevant matters, I asked the client for his views on the matter and he confirmed his instructions to proceed with the offer of a plea to the alternative offence.</p>	

I then set out the next steps regarding the hearing including practical advice about transportation to court (as a risk of disqualification), attire and time to meet.

Letter

I wrote to my driver client charged with careless driving, to set out the current position in his case, advice and next steps.

I always send a letter of advice to clients prior to trial so that they are fully informed in writing of my advice, particularly in respect of defence prospects and the alternative option available (ie guilty plea and sentence).

The letter is structured confirming the circumstances of the index incident and procedural position. I then set out the prosecution case by reference to the prosecution evidence.

The key part of the letter is the advice and strategy in which I set out the burden and standard of proof and what the prosecution has to prove in order for the court to find the client guilty of the offence. Having set out the prosecution case, I provide my opinion in respect of the strength/weaknesses of the evidence and what are likely to be the deciding factors at trial.

Although in this case I considered that we had a good chance of acquittal, I warned the client that trials are an unpredictable process and that there was a risk of conviction. I then advised the client of the potential sentence and the fact that he would bear the prosecution costs of bringing the case to trial in the event of a conviction.

I then advised the client in respect of his options and the availability to change his plea to guilty. I confirmed that I was not seeking to persuade him in any way to change his plea but rather that I was under a duty to advise him of all his options. I urged him to provide instructions and to confirm to me as soon as possible if he did wish to change his plea to guilty so that I could inform the court.

I confirmed that the costs of his defence representation were being met by his motor insurers.

I then set out the next steps in the case and arrangements that I would make nearer the trial date. I have also acknowledged that there may be potential language issues at trial whilst taking care to handle this appropriately and confirm that I would seek his views on the instruction of an interpreter closer to the trial date.

The letter follows a structured sequence and is written in an uncomplicated style providing clear advice, identifying the options available and next steps.

Opportunity for further development, (if any)

I consider that I am skilled in identifying the legal and evidential issues in cases and that this provides me with a sound basis to advise my clients and decide on an advice strategy. I have had a very high track record of acquittals in the last 5 years and believe that this is down to providing reliable and well-founded advice.

In relation to case one above, in hindsight the strategy was perhaps a little optimistic. I will always seek an alternative route if one is available whilst managing my client's expectations. In this case, I made it very clear that I could not give any guarantee that the offer to a plea to the alternative offence would succeed, but I am aware that the client would have got his hopes up. This was a salient reminder to be realistic in terms of prospects and to ensure that clients are fully aware that the outcome is not always the one we are hoping for.

Completion date: 3 November 2023

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Skills Element Costs and Funding	Learning Outcome Costs
Evidence Provided: Letter to client dated 8 February 2023	Page in Portfolio 92
How does this meet the outcome? <p>Mr and Mrs █████ are the employers of the defendant. They instructed us to represent D and agreed to fund his legal representation.</p> <p>Given that Mr and Mrs █████ were paying our fees, we were under a duty to keep them informed in respect of costs issues.</p> <p>The letter was an update on the present position in the case and advice regarding the Defendant's prospects. It was appropriate at this stage to set out the costs implications should the defendant be convicted at trial and setting out the legislation that provides for such orders.</p> <p>Conversely, should he be acquitted, we would be able to apply for a defendant's costs order to apply for the reimbursement of our fees from central funds assessed at legal aid rates.</p> <p>The powers enabling the court to award orders for costs in criminal proceedings are contained in Part II of the Prosecution of Offences Act 1985.</p> <p>Sections 16 and 16A of the Act make provision for the award of defence costs out of Central Funds (a defendant's costs order). Section 17 provides for an award of costs to a private prosecutor out of Central Funds. Section 18 gives power to order a convicted defendant or an unsuccessful appellant to pay costs to the prosecutor. Section 19(1) of the Act and Regulation 3 of the General Regulations provide for awards of costs between parties in respect of unnecessary or improper acts and omissions. Section 19A provides for the court to disallow or order a legal or other representative of a party to the proceedings to meet wasted costs.</p> <p>I have experience of drafting an application for wasted costs against the Crown under Section 19(1) along with the provision of a costs schedule, but am unable to evidence as due to no longer being employed by DAC Beachcroft Solicitors. Typically, I have made such applications when a failure by the Crown has resulted in unnecessary hearings thus incurring wasted costs.</p>	
Opportunity for further development, (if any) No opportunity for further development identified.	
Completion date: 4 November 2023	

Skills Element Costs and Funding	Learning Outcome Funding
Evidence Provided: Letter dated 16 November 2021 Engagement Letter driver client 21 September 2023	Page in Portfolio 104 108
<p>How does this meet the outcome?</p> <p>Letter dated 16 November 2021 to Insurer Client</p> <p>We were instructed by the defendant to represent him in criminal proceedings, charged with an offence of careless driving. He had legal expenses cover under his motor insurance policy but the decision of his insurers to fund legal representation was on a discretionary basis subject to defence prospects. I set out a detailed breakdown of potential costs including my hourly rate, an estimate of counsel's fees and expert's fees to prepare a report and attend trial.</p> <p>Ref Public Funding Eligibility</p> <p>I work in private practice and both firms I have worked for in the last 11 years do not have a Legal Aid Agency contract. All my work is either insurer funded or privately funded and therefore I am unable to evidence any detailed advice regarding public funding or any applications for legal aid funding. Furthermore, we do not seek prior authority for the commission of experts.</p> <p>Recovery of costs in the crown court for private paying clients</p> <p>A defendant acquitted in the Crown Court can recover legal costs via a defendant's costs order; however this is only available to a non-legal aid client if that client was assessed following application as ineligible for legal aid. Therefore, in order to recover costs, they would have to have applied for legal aid in the first place. Whilst LMP Legal does not have a contract to undertake legally aided work, we perhaps deal with a higher proportion of ineligible clients and so are required to apprise prospective clients of the position at the outset of engagement.</p> <p>The Law Society Practice Note of 18 March 2021 sets out the requirements to advise non-legally aided clients of the position and to advise of their funding options. Even though LMP Legal does not undertake legally aided work, we are required to advise clients that they could approach another firm with a legal aid contract, even if they are likely to be ineligible, to preserve their position for the recovery of costs in the event of acquittal.</p> <p>See client care letter dated 21 September 2023</p>	

I am aware of the eligibility requirements for publicly funded legal advice and representation. I worked in a Legal Aid Agency criminal firm from 2009 – 2013 and so do have experience in practice, albeit dated.

Eligibility

At the Police Station

Everyone is entitled to free legal advice and representation at the police station if they are to be questioned under the Legal Aid Advice and Assistance Scheme.

The police must advise a suspect about their right to free legal advice after arrest and prior to interview.

At the Magistrates' Court

In order to obtain legal aid at court, an application has to be made for a representation order. There are two tests that must be satisfied for a representation order to be granted. These are the interests of justice test and a means test.

Interests of Justice

A Representation Order will be granted if it is "in the interests of justice". The court will have to consider whether:

- a) The person applying would lose his or her liberty, or
- b) Has been given a suspended or non-custodial sentence already, or
- c) Likely to lose livelihood, or
- d) Likely to suffer serious damage to their reputation, or
- e) The proceedings involve consideration of a substantial question of law, or
- f) The person may be unable to understand the proceedings or to state his own case, or
- g) The proceedings may involve tracing, interviewing or the expert cross-examination of witnesses on their behalf, or
- h) It is in the interests of another person that the individual is represented.

Generally, if a person is charged with a non-imprisonable offence, the case will not meet the interests of justice test unless the case is sufficiently complex.

Indictable only cases always satisfy the interests of justice test.

Means Test

The second test is a means test. Legal Aid will not be granted if you earn over a specified amount.

If you are in receipt of qualifying benefits (eg Income support, jobseeker's allowance, universal credit) the case will automatically be deemed eligible for legal aid.

To be eligible for representation in criminal proceedings, the applicant's gross annual income must be less than £ 22,325.

Where the applicant's gross income is more than £ 12,475 and less than £ 22,325, a more detailed assessment to determine annual disposable income is carried out. If the applicant's annual disposable income does not exceed £ 3,398, the applicant will be eligible for representation in criminal proceedings. If the applicant's annual disposable income exceeds £ 3,398, the applicant will be expected to pay for their own defence in the magistrates' court.

There is a hardship review procedure where an applicant has been assessed as not eligible due to disposable income but where they do not have sufficient financial resources to pay the costs. An example of this may be where the applicant is paying for child maintenance or has other substantial outgoings (eg loan repayments).

In the Crown Court

In the Crown Court, an individual is eligible for legal aid if that individual's gross annual income does not exceed £12,475, or where their gross annual income is greater than £12,475 and disposable annual income is less than £37,500.

Where an individual's disposable annual income is £37,500 or greater, they are not eligible for legal aid.

Potential Financial Implications

If an individual's annual disposable income is £3,398 or less they are not required to pay a contribution from their income. However, if the disposable income exceeds £3,398 they are required to make six monthly payments under an income contribution order of up to 90% of their monthly disposable income. Such contributions are generally onerous and can be difficult to recover.

Applicants in direct or indirect receipt of passporting benefits are not required to make a contribution from their income.

At the conclusion of the case, an applicant who is acquitted is refunded any payments made under an income contribution order. An applicant who is convicted may in addition be required to pay an additional amount from their disposable capital towards the balance of their defence costs. While the individual's income is considered for the purposes of the contribution order at the outset and during proceedings, an individual's capital is only considered for this purpose at the conclusion of proceedings.

Forms

To apply for criminal legal aid, the solicitor would assist the applicant in completing CRM14 and CRM15 forms

Supporting documentation to be included with the application includes:

- Evidence of employment, or partner's employment or both. Usually a wage slip. Must be dated within 3 months of the application. If a sole trader, self assessment tax return or in the case of a director, company business accounts.
- Proof of benefits in kind, eg a company car

- Proof of pension payments
- Bank statements
- Proof of rental income
- Proof of housing costs eg mortgage statement or tenancy agreement
- Council tax bill
- Proof of childcare costs
- Proof of child maintenance costs

Applicants who wish to request a review of their financial circumstances on the grounds of hardship must submit a paper CRM16.

Opportunity for further development, (if any)

As all my current and recent work is privately funded, I do not have recent practical experience of making legal aid applications and so this would be an area I would benefit from training if I took on a role in a legal aid firm. However, this is not something I anticipate due to the reasons set out the summary of Experience.

I consider that I am very thorough in providing estimates of fees. We usually require a new client to provide us with some funds in advance to be held on client account at the outset of a case and so we have to be realistic in terms of a fee expectation.

Completion date: 7 November 2023

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Skills Element Costs and Funding	Learning Outcome Documentation
Evidence Provided: <ul style="list-style-type: none"> • Letter Funding Client dated 12 January 2023 • Letter Defendant (employee of funding client) dated 13 January 2023 • Email and Schedule of costs dated 26 May 2023 	Page in Portfolio 118 115 121-124
<p>How does this meet the outcome?</p> <p>On starting my employment with LMP Legal Ltd I was tasked with drafting the template client care engagement letters for private paying clients and insurer funded clients.</p> <p>Draft client care letters</p> <ul style="list-style-type: none"> • Letter Funding Client dated 12 January 2023 • Letter Defendant (employee of funding client) dated 13 January 2023 <p>We were instructed by the funding client to provide criminal defence representation to his employee (carer for disabled son).</p> <p>The funding client had undertaken to fund the costs of his employer’s representation and so the engagement letter set out the scope of the work involved and anticipated costs and payment terms.</p> <p>Where there is another party funding the matter, we still need to have a valid retainer with the defendant client and so a separate client care letter was sent to the defendant providing clear information on the funding of the case, confirmation of my experience, complaints procedure, methods of communication and full contact details.</p> <p>Our complaints procedure was clearly stated on each client care letter.</p> <p>Refer to earlier Skills Logbook relating to funding for an explanation of my position in respect of public funding. As both firms worked for do not have a legal aid agency contract, I have not had any need to complete any criminal defence solicitor forms to obtain public funding or seek authority to instruct experts. However, as set out in the earlier skills logbook, I am required to set out to clients what alternative funding may be available.</p>	

Prepare estimates and schedules of costs for privately funded clients:

Email and Schedule of Anticipated Costs dated 26 May 2023

We were instructed by the brokers of a specialist transport company to represent their policyholder's driver who had been involved in a fatal road traffic collision. It was suspected that the driver had suffered a medical episode (epilepsy) whilst driving. Following the police station interview, I was asked to provide a schedule of anticipated costs for the remainder of the case. In the schedule, I provided costs for both defence to trial (in the event of a prosecution) and to inquest (if referred to HM Coroner). I also provided truncated costs anticipated in the event that a prosecution followed but where we were able to negotiate with the Crown to withdraw the prosecution.

I was able to draw from my experience to estimate the time that would be involved in preparation at each stage of the case. In my accompanying email, I made it clear that these were estimates only and that if costs were agreed we would monitor and mitigate fees where possible.

Opportunity for further development, (if any)

None identified

Completion date: 7 November 2023

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