Skills Element Professional Conduct and Ethics	**Learning Outcome** Conflicts
Evidence Provided: Telephone Attendance Note dated 11 December 2021 Copy of email sent to prospective client dated 1 August 2023	**Page in Portfolio** **154** **155**

How does this meet the outcome?

Telephone Attendance Note dated 11 December 2021

Principle 7 of the CILEx code of Conduct states that you must ensure that your independence is not compromised. The following rules apply:

You must:

7.1 not act or continue to act where there is a conflict of interest or a significant risk that a conflict may arise

Furthermore, Principle 6 of the SRA Code of Conduct states:

6.1 you do not act if there is an own interest conflict or a significant risk of such a conflict.
6.2 You do not act in relation to a matter or particular aspect of it if you have a conflict of interest or a significant risk of such a conflict in relation to that matter or aspect of it, unless:

The clients have a substantially common interest in relation to the matter or the aspect of it as appropriate; or
The clients are competing for the same objective,

And the conditions below are met, namely that:

All the clients have given informed consent, given or evidenced in writing to you acting;
Where appropriate, you put in place effective safeguards to protect your clients' confidential information; and
You are satisfied it is reasonable for you to act for all the clients.

Application:

I cannot act on behalf of an individual if there is a risk that in doing so there may be a conflict of interests with another client. In this example I had been instructed by a 16 year old to represent him in a police investigation and subsequent court proceedings arising out of a road traffic

collision in which he had taken his mother's car and driven it without a licence and was uninsured at the time of driving.

The client's mother had contacted me as the insurers of the vehicle had asked whether her son had stolen the vehicle or if he had taken it without consent. The insurers had confirmed that if she told them that he had stolen the car, they would pay out the damage claim. However, if he had taken it without consent, they would refuse to pay out. Clearly there were substantial financial implications but also a risk of prejudice to my client's case.

I assessed that there was an immediate conflict of interests. I considered whether there was a substantially common interest or whether my client and his mother were competing for the same objective and determined that their interests were opposed.

I advised my client that I could not provide advice to his mother and that she would need to obtain independent advice with another firm of solicitors.

Conflict with Insured's Employers

I am currently dealing with a case under police investigation in which it is alleged that the driver used his vehicle as a weapon and drove into a male sending him through a brick wall. He is under police investigation for causing grievous bodily harm with intent, contrary to Section 18 Offences Against the Person Act 1861.

Initially we were instructed by the insurers of the vehicle to obtain information from the driver about the incident and to confirm the circumstances. Following initial discussions, the insurers declined funding due to the nature of the allegation (using vehicle as a weapon). The driver has now instructed my firm on a private paying basis.

The driver believes that during the index incident, the brakes on the vehicle failed which then caused the vehicle to hit the victim. At the time, the driver was working as a delivery driver for a courier company and was a permitted driver of the vehicle in question. The insurance company asked if they could instruct us to represent the courier company as the driver was potentially alleging a breach of duty.

Of course, there was clearly an immediate conflict of interests as we were representing the driver. I confirmed to the insurers that under the circumstances we could not act.

This would be the case even if there had not been an immediate conflict but where there was a potential risk of conflict.

Copy of email sent to prospective client dated 1 August 2023

We received an enquiry to represent two farmers who were father and son. Both had been charged with offences of assault relating to the same incident and complainant. In my initial email to the client I set out the risk of a conflict and said that I would have to consider that risk once I had obtained their instructions.

Examples of such a conflict might be if one blamed the other or where possibly one wished to plead not guilty and have a trial but the other defendant wanted to plead Guilty. That could potentially prejudice the other case and it could be improper to represent only one client. Potentially this could also raise a breach of duty of confidentiality.

Opportunity for further development, (if any) I am always alive to the potential risk of a conflict of interests. Because of the nature of our work, potential conflicts at the police station or conflicts in multi-handed defendant cases rarely arise. I feel confident that I am able to identify the potential risk and know how to deal with such matters sensitively and appropriately.
Completion date: 10 January 2024

Skills Element Professional Conduct and Ethics	**Learning Outcome** Withdrawal from case
Evidence Provided: Attendance note of telephone call with client dated 27 March 2021 (Also used at 3a)	**Page in Portfolio** **160**

How does this meet the outcome?

Attendance note of telephone call with client dated 27 March 2021 (Also used at 3a)

This was a situation in which withdrawal from the case was a potential prospect due to the competing duties of confidentiality and an obligation to share information with the client's insurer. Withdrawal was not necessary in this case but the note demonstrates that I have an awareness that situations may arise in which withdrawal is required and that I understand the steps that have to be taken.

I assured the client that should withdrawal be necessary, we would not be obliged to state the reason to either the court or to his insurer.

I understand that to withdraw from acting in a criminal case there must be a compelling reason to do so. A compelling reason would comprise anything that may mean a breach of the Code of Conduct and the professional duties owed to client and court.

Examples include situations in which there is a conflict of interests of where a client changes their instructions such that to continue acting would amount to misleading the court.

Another example may include the client deciding to instruct another firm. In privately funded cases, this is straightforward. If a private client decides to end the retainer, the lawyer acting must withdraw.

Where a matter is publicly funded, the court may refuse or grant an application for a change of legal representation.

When informing the court of the withdrawal from a case, one must not breach legal professional privilege and so it may be that the reasons for withdrawal cannot be provided to the court.

Opportunity for further development, (if any)

None identified.

I have never had to withdraw from a case but am familiar with the steps to be taken in such a situation.	
Completion date: 7 November 2023	

Skills Element Professional Conduct and Ethics	**Learning Outcome** Confidentiality and Privilege
Evidence Provided: Provided below and Attendance note of meeting with client on 12 January 2023	**Page in Portfolio** **165**

How does this meet the outcome?

Legal Advice Privilege and Litigation Privilege

Legal Advice Privilege is the protection afforded to clients so that they may discuss their legal position with their lawyer in the knowledge that the communication will remain confidential. This covers all confidential communications between a lawyer and their client for the purpose of giving and/or receiving legal advice. For example, advice given and received at the police station prior to police interview under caution.

Litigation privilege allows parties to investigate potential disputes without the worry that those investigations could be disclosed to the other side. It can exist outside of the typical client/solicitor relationship and covers any document or communication which has been produced for the purpose of obtaining information or advice in connection with existing or contemplated litigation subject to certain conditions. Those conditions are that:

1. The document is a communication between:
(i) lawyer and client
(ii) lawyer and a third party (e.g. an expert, witness or other professional), or
(iii) the client and a third party;
2. Litigation must be in progress or in contemplation;
3. The communications must have been made for the sole or dominant purpose of conducting that litigation; and
4. The litigation must be adversarial.

Confidential Information and Privileged information

Confidentiality is a basic requirement in legal practice. A lawyer may not reveal information relating to the representation of a client. This is the duty of confidentiality which applies to information about your client's affairs irrespective of the source of the information. It continues despite the end of the retainer or the death of the client when the right to confidentiality passes to the client's personal representatives. It attaches to all information given to you by a client or third party in respect of the retainer in which you are instructed.

Lawyer–client privilege is a legal concept that protects certain communications between a client and his or her attorney. If a lawyer is in possession of information under privilege, they cannot be legally compelled to disclose such information during litigation.

Confidential information may be disclosed where it is appropriate to do so but privilege is absolute and privileged information cannot therefore be disclosed.

When confidential and privileged information may or must be disclosed

Disclosure of confidential or privileged information may be allowed where the client consents to it or where it is permitted by law.

In situations where consent to the disclosure of confidential information is sought, the lawyer must be clear, so that client is aware, to whom the information should be made available, when and for what purpose.

In motor insurer funded cases, we are obliged to share information about our client's case with the motor insurer. Prior to formal instruction, I always advise my client of this and confirm their consent. See attached evidence:

> "I advised that although instructed by Zurich, my job is to act on his behalf and ensure his interests are fully protected. All discussions are private and privileged though we are obliged to share information with the insurers. I confirmed that [redacted] understood this and he indicated that he was content to proceed on that basis"

Before seeking the client's consent, you should consider

- What is the purpose of the third-party access to the information and can the purpose be achieved in other ways?
- Should there be any limitations on the access?
- Are you satisfied that seeking the client's consent to disclosure would not harm the client's best interests?

When information is shared, firms should consider any actions they can take to mitigate the risks. This may include entering into a formal confidentiality agreement with a third party.

Disclosure may be permitted by law. A good example of this would be the disclosure of criminal activity by the client, eg money laundering, to the police or law enforcement agency. The over-riding principle here is that there is no confidence in an iniquity and communications that further a criminal purpose are not privileged.

There may also be situations in which disclosure should be made to the SRA.

Disclosure may also be necessary to prevent the commissioning of a serious criminal offence or prevent harm to the client or a third party, eg where a client has indicated an intention to commit suicide or self-harm, it may be appropriate to notify medical personnel. Similarly where there is a risk of harm to a child or other vulnerable person it may be appropriate to provide confidential information to an authority.

There is a fine balance between the duty of confidentiality and the public interest in preventing harm to others.

Before making a disclosure, you should consider the absolute nature of legal professional privilege and the fundamental nature of the duty of confidentiality. You should remember that the circumstances in which confidentiality can be overridden are rare.

If you are considering the disclosure of information without your client's consent and where it is not otherwise permitted by law, you should always:

- consider whether the appropriate course is to discuss your concerns with the client in order to obtain their agreement to steps to prevent the harm which concerns you.
- carefully consider the most appropriate person to disclose your concerns to, for example: a family member, the client's doctor, social worker, police, or other public authority.
- limit the amount of information being disclosed to that which is strictly necessary.
- keep an attendance note detailing your concerns and the factors that you considered prior to making the disclosure. This should include the reasons why you considered that it was not appropriate or practicable to obtain your client's consent to the disclosure.

Opportunity for further development, (if any)

Completion date:

10 January 2024

Skills Element **Professional Conduct and Ethics**	**Learning Outcome** Complaints and Negligence
Evidence Provided: See Below	**Page in Portfolio**

How does this meet the outcome?

Describe/Explain the complaints procedure operated by their professional body.

CILEx Regulation operates a similar complaints procedure to the SRA and may investigate conduct upon declaration by a member or other information received.

The Professional Conduct Panel reviews and investigates information received from third parties which may amount to misconduct. Following investigation, the panel may determine that:

(a) there is no case to answer; or

(b) there is a case to answer and:

(i) refer the allegation to the Tribunal; or

(ii) with the admission and consent of the Regulated Person, dispose of the allegation.

Where the Regulated Person admits an allegation and consents to the Panel doing so, the Panel may dispose of the matter by:

(a) requiring the Regulated Person to give undertakings as to their future conduct;

(b) imposing conditions on the Regulated Person in respect of their conduct or, in the case of an individual, their employment;

(c) reprimanding the Regulated Person, warning them as to their future conduct or both.

The Panel may at any time consider whether it is necessary for the protection of the public, in the interests of the Relevant Person concerned or otherwise in the public interest to suspend or restrict a Relevant Person's Membership or Authorisation pending a hearing before the Tribunal.

Disciplinary Tribunal Panel

Where the Tribunal finds that one or more of the allegations against the Respondent has been proved the Tribunal may take no further action, reprimand the member, impose conditions on

their employment or make an order of exclusion from membership or authorisation for such period as it may decide.

The tribunal may also order the payment of a fine and costs.

Procedures/Processes to be adopted to reduce the risk of complaints or allegations of negligence:

The standard of legal services and the actions of lawyers has an impact on public confidence in the profession and the effectiveness of the operation of the legal system. Therefore it is imperative that solicitors achieve these standards and that firms maintain them. Ways in which firms can reduce the risk of complaints:

- Recognise the importance of communicating with clients so they know what they can expect and how much it is likely to cost.
- Issue a well drafted client engagement letter setting out the terms of the retainer, the work to be completed and an estimate of cost. Incorporate the right to complain and how a complaint can be made;
- make sure solicitors are capable of carrying out the work they are assigned to do;
- Understand the client's individual needs and treat them fairly.
- Provide an efficient service and progress work in a timely manner;
- Keep clients informed throughout the case and updated regarding costs;
- dealing properly with any complaints that arise.
- train staff to respond to dissatisfied clients before they make complaints.
- Have a workplace culture that aims to continuously improve their competence and client care.
- support staff training and development in communication and complaint handling skills, as well as core skills and knowledge
- identify ways that technology can improve their processes and services;
- get feedback from clients about the service and information they received;
- monitor their online presence, including reviews and social media'
- encourage an open culture about complaints and avoid placing blame on fee earners so they can respond in a productive way and share how they have learned from complaints

Consequences of a successful complaint or allegation of negligence being made

SRA

In the event that the Legal Ombudsman, an ADR process of the courts have been engaged, the SRA may take action where negligence, service or competence issues are serious or suggest multiple failures or repeat poor conduct.

The SRA adopts a risk-based approach to regulation and thus the purpose of enforcement action includes the deterrence of behaviours that breach the core principles as well as stronger sanctions including the control of firms that represent a risk to the public and removal of those who represent a serious risk to the public. Serios cases may require referral to the Solicitors Disciplinary Tribunal.

Other cases may be dealt with by way of a written rebuke or a Finding and Warning.

Furthermore regulated persons may be fined a penalty of up to £ 25,000 for serious acts or omissions.

Mitigating factors to be considered that may lead to a lower penalty include early and genuine acceptance by the solicitor that misconduct has been committed, prompt apology, cessation of misconduct, cooperation with the SRA investigation and where the misconduct was not intentional.

Many cases can be dealt with by way of a casework decision, letter of advice, a Finding and Warning, rebuke or financial penalty.

Casework Decision

A casework decision is where a case is closed without formal action where:

- There is no issue of professional conduct;
- there is no evidence of misconduct or;
- it is not proportionate to pursue the matter in all the circumstances.

Letter of advice

A letter of advice may be issued where there has been misconduct which is considered to be minor or technical with low impact and a low likelihood of repetition.

Finding and warning

A warning may be issued for a significant but isolated incident of misconduct.

The finding is that the misconduct has occurred and the warning is that this may be taken into account in determining the outcome of any future investigation.

Rebuke

A written rebuke is a statutory disciplinary sanction. A rebuke may be given when there has been significant misconduct, or a series of incidents which are cumulatively significant. A rebuke will be appropriate when the misconduct has caused, or had the potential to cause, significant impact.

Financial penalty

A financial penalty is also a statutory disciplinary sanction and may be directed when there has been serious misconduct, or a series of incidents which are cumulatively serious.

A financial penalty rebuke will be appropriate when the misconduct has caused, or had the potential to cause, substantial impact.

A financial penalty may also be appropriate when the regulated person has made some gain from or in relation to the misconduct and it is appropriate to reduce or negate the gain.

Referral to the Solicitors Disciplinary Tribunal (SDT)

A referral to the SDT may be made where misconduct has caused, or had the potential to cause high impact. Decisions must fulfil an evidential test and a public interest test.

A referral is not a finding of a breach of the Standards and Regulations, it is a decision to prosecute before the SDT. Allegations may be contested and may not be proven. The tribunal does not investigate cases or collect evidence in support of these applications but simply reaches a decision based on the evidence put before it by the parties to the matter.

The SDT has the power to strike off a solicitor from the roll, suspend a solicitor from practice or fine or reprimand a solicitor, and whilst it cannot make an award of compensation it can make an award of costs.

Opportunity for further development, (if any)

No further training or development identified

Completion date:

6 November 2023

Skills Element	**Learning Outcome**
Managing Litigation Work	File Handling
Evidence Provided: • Emo client (19 July 2023) ref forthcoming hearing and costs • Aide Memoire for meeting with client dated 6 January 2022 • Better Case Management Form – 10 February 2022 • Application to Change Trial Hearing Date – 10 January 2022	**Page in Portfolio** **183** **184** **198** **188-197**

How does this meet the outcome?

Email out to client dated 19 July 2023

Allocate time and resources appropriately

It is always important to monitor and mitigate clients' costs, and perhaps more importantly so when clients do not have funding from an insurer and are paying privately for their defence representation.

The context of this case is that the defendant was convicted of speeding in absence on 9 May 2023 and further disqualified in absence on 6 June 2023. The defendant knew nothing about these proceedings as the Police had issued the papers to an address that he had not resided at for 2 years, despite the fact that DVLA hold the correct address, as on his driving licence. The defendant only became aware of these proceedings on 13 June 2023 following a routine check of his driving licence online.

We were already instructed by the defendant on a fail to provide information case in which the matter was listed for trial on 27 June. We wrote to the court to apply for the case to be reopened under Section 142 Magistrates' Court Act 1980 and the court listed the matter to be heard on 27 June at the end of the trial when the case was formally re-opened. To achieve progress at the hearing, I had emailed the Police Prosecution Team prior to the hearing to progress matters. Unfortunately, at the hearing on 27 June, the matter could not be case-managed because Northamptonshire Police did not send anyone to attend. As such the matter had to be adjourned to 31 July.

We were instructed on a private basis and Counsel was retained to represent the defendant at court. The defendant had already incurred significant costs on an ineffective hearing (because the

police did not attend). Given the improper issue of the papers to an incorrect address, we anticipated that Northamptonshire Police will be anxious to ensure that any further defence costs were mitigated.

I had written to the police prosecution team on several occasions to request a decision on the defendant's basis of plea so that the case could be heard on the next occasion. The police had responded to advise that they would be unable to hear any trial at the next hearing which they considered to be listed for a case management hearing only.

I had earnestly appealed to the police to progress matters before the hearing date and to warn their police officers to attend court (as they would be required to give evidence). At the point of emailing the client, I was still in the process of liaising with the police.

The client had paid funds in advance at the point of engagement, and I regularly monitored the client account against recorded time on the matter so that I could inform him when further funds are required. On this occasion, we required further funds on account for counsel's fee for attendance. In order to mitigate costs, I would not attend the hearing. This demonstrates that I allocate time and resources appropriately and seek to progress matters in order to mitigate my client's costs.

Aide Memoire for meeting with client dated 6 January 2022

I was instructed by D to represent him in criminal proceedings where D was charged with an offence of careless driving. In the first instance, his motor insurers had agreed funding for the preparation of his case up to the point that the prosecution disclosed the CCTV in the matter at which time prospects would be reassessed.

Following receipt of the CCTV, which was served late and only 5 weeks before the trial date, several issues had arisen in the case including the withdrawal of funding by his motor insurers who considered his prospects weak on the basis of the footage. I disagreed with this position and canvassed some informal views from an independent expert whose views were helpful and could potentially assist the defence case. In order to rely on expert evidence, we would need a report which would take us beyond the current trial date.

Should the defendant's instructions remain unchanged, ie to defend the matter, and in the event that we intended on relying on expert evidence, we would need to apply to vacate the trial date.

There was the further issue that the defendant already had 6 points on his licence. Should he be convicted at trial, or should he change his plea to guilty, the offence would carry 5 – 6 points which, added to the existing points, would mean likely disqualification under the totting provisions. In those circumstances we would need to advance an exceptional hardship application.

I arranged a meeting with the client to discuss the issue of funding and my revised opinion on defence prospects along with a strategy. It was my proposed strategy to encourage the defendant in respect of his prospects so that he might consider privately funding the expert's report. Thereafter, should the report be helpful to the case, the insurers would possibly resume funding. Of course, there would be no guarantee of this and so I needed to inform the client of his options in respect of further funding and that he would be free to instruct a legal aid firm of solicitors. Whilst Legal Aid would not be available for this offence, the solicitor rates would likely be lower.

The aide memoire demonstrates that I constantly monitor case strategy and actively manage matters when issues arise.

Better Case Management Form

Criminal Procedure Rules Part 3 – Case Management

I represented a client charged with Causing Death by Careless Driving. Prior to the preliminary hearing in the Magistrates' Court, I completed the required BCM Form with the key case information for the defence. This includes contact details and other information to assist with the management of the case. In this case, I set out the defence requirement to commission an expert to prepare a report and the timeframe for this work. I also confirmed the expert retained.

Defence Certificate of Readiness for Trial

Legal Procedure; 24C.30- 24C.32 Part VI Trial, Criminal Practice Directions 2015

My client's case had been listed for trial prior to our instruction. A trial date of 24 January 2022 had been listed. The Crown's key evidence, a piece of CCTV footage, was served on us on 16 December 2022. The trial date did not allow sufficient time for us to commission an expert to analyse the footage and prepare a defence report. Time was also required to allow time for the Crown to respond to our report. I applied to the court to vacate the trial date.

The court's procedure for submitting an application to vacate a trial date is by the completion of a form setting out the case details, the party making the application and the reason for the application along with a case chronology. In keeping with the Practice Directions I set out why it was in the interests of justice to change the hearing date. I sent this form to the court copying in the prosecuting authority.

In order to assist the court in identifying a new date for the trial, I provided availability for both defence counsel and expert.

Opportunity for further development, (if any)

None identified

Skills Element Managing Litigation Work	**Learning Outcome** Case Analysis and Case Preparation
Evidence Provided: Advice letter dated 19 January 2023	**Page in Portfolio** **204**

How does this meet the outcome?

My client was facing trial at Lincoln Crown Court charged with an offence of Causing Death by Careless Driving. I wrote a letter providing my advice on the evidence and proposed strategy at trial.

There was little in the way of physical evidence regarding the collision mechanics – almost all the evidence was comprised of eye witness accounts, many of which were entirely contradictory.

Identify the key points the prosecution must prove in order to secure a conviction:

- That the standard of driving fell below the standard of a careful and competent driver; and,
- that the driving was a cause of the death

In the letter I have identified that in order to be convicted, the Crown would have to prove that (1) Mr Atkin was already overtaking when the defendant pulled out, (2) the defendant failed to observe Mr Atkin's vehicle in the process of overtaking and thus either he didn't look at all or when he did look he didn't look properly and failed to see Mr Atkin already established in an overtake manoeuvre.

The available evidence the prosecution has to prove these points:

The prosecution case was comprised of primarily eye-witness statements and a police collision investigation reconstruction.

One of the key witnesses in the case stated that he had an unobstructed view of what played out in front of him. In his statement he said that the Mini indicated to overtake and then pulled out. He states that the passenger door of the Mini drew ***alongside the Audi's driver door*** *(suggesting that the Mini had progressed as far as to be level with the driver)* the Audi pulled out to overtake then sped off causing the Mini to take avoiding action.

The Police conducted a reconstruction with the vehicles involved in the incident. The Police investigator found that the MINI, when following or overtaking the Audi, was ***always*** visible in either the internal rear-view mirror, the offside door mirror or within the field of view from the offside front window. However, the MINI would not have been visible in the offside door mirror of the Audi once the front of the MINI had drawn level with the leading edge of the Audi driver's

door, but would have been partially visible from the front offside window in the driver's peripheral vision, or if the driver were to turn their head to the right.

Identify what defence the client is raising and what evidence is available in relation to this defence.

The client's defence is that he made all the requisite checks before conducting his manoeuvre and that when he checked his rear-view mirror the Mini was there on its correct side of the road. He did not see the Mini starting to overtake and presumed it had remained behind. He disputed that the Mini had driven alongside his vehicle for a period of time.

In respect of the defendant's requisite checks being conducted. this was supported by Jack Shearer who stated that they came to a long stretch of road where you could see in the distance ahead. It was safe to overtake. He stated that prior to overtaking, Mr Bircher moved forward in his seat to check his mirrors and believed that he indicated.

Isobel Bircher who was sat in the rear of the vehicle was paying attention and had looked up when she realised that the car was overtaking. She stated that she did not see any vehicle to her side. There may be questions raised over why she said "sorry" to Mr Atkin and it may be put to her that an apology suggests she knew that Mr B had done something wrong. However, the witness was in shock and this is likely to be accepted by a jury.

Perhaps the most compelling defence evidence came in the form of expert evidence. In the letter I have set out the key points of our expert's findings (1) that it was not possible that the Mini could have held a position alongside the Audi (2) it was entirely feasible that at the point the defendant checked his mirrors the Mini was still behind, (3) it likely that Mr Atkin was exceeding the speed limit when he pulled out to overtake, (4) that in order to see the Mini when it was in any of the mirrors, the defendant would have to be looking in that specific mirror at the same time, (5) there was simply no physical evidence to allow us to prison the Audi relative to the Mini was the overtake was being made by Mr Atkin.

Identify the strengths and weaknesses in the case

Evidence that strengthens the Prosecution Case:

Jack Atkin – co- accused.

I advised Mr B that his co-defendant would seek to deflect all liability at trial. Despite the fact that his vehicle collided with the Ford, Mr Atkin's evidence is that he pulled out to overtake both the defendant's car and the Ford. As he came level to Mr B's car, Mr B pulled out causing him to swerve. He ended up on the grass verge before re-joining the carriageway and colliding with the Ford. He stated that he did not see an indicator on the Audi.

Weakness – following the collision, Mr Atkin sought to lie – by suggesting to Jack Shearer (before realising that he had been one of the passengers in the Audi) that the Audi had crashed into him and there would be damage to the Audi. That was a lie, no doubt seeking to deflect blame.

Weakness – Mr Atkin intended overtaking two vehicles which could be considered inherently dangerous, given that there is always a risk the vehicle ahead will pull out to overtake the first. It is always far safer to wait until you can overtake one vehicle at a time or until the vehicle in front has overtake the slower moving vehicle.

Mr Gaskin

The evidence of the key prosecution witness stating that he had an unobstructed view and that he saw the Audi pull out when the Mini drew alongside the Audi's driver door.

Weakness: the position of the driver was such that he would not be able to accurately assess how far alongside the Audi the Mini had progressed.

Weakness: the suggestion that the Mini was alongside the Audi was not supported by any other evidence. Isobel Bircher sitting in the back seat would have been aware of it. Furthermore, had the Mini drawn alongside the Audi in this way, then surely there would have been a collision between the Audi and the Mini when the Audi pulled out.

Reconstruction

The police collision investigator conducted a reconstruction and found that the Mini was always available in either the internal rear-view mirror, the offside door mirror or within the field of view from the offside front window.

However, the MINI would not have been visible in the offside door mirror of the Audi once the front of the MINI had drawn level with the leading edge of the Audi driver's door, but would have been partially visible from the front offside window in the driver's peripheral vision, or if the driver were to turn their head to the right.

Weakness: The above relies on the driver looking in the specific mirror when the target was in the view of that mirror. Driver cannot be looking in all the mirrors at the same time. Once driver has looked and checked a mirror, they are not expected to keep repeating that process.

Furthermore, whether this argument is relevant relies on the prosecution being able to prove that the Mini did in fact draw alongside the Audi.

Evidence that weakens the prosecution case and gaps in the evidence.

The case was characterised by a lack of physical, material evidence. All the experts agreed that there was no evidence whatsoever to show the relative positions of the vehicles when the defendant decided to overtake. The only physical evidence available is that in relation to the Mini and Ford.

Furthermore, three of the independent witnesses had advanced inconsistent witness accounts. The inconsistencies related to the material facts of the case – for example the order of the vehicles, which vehicles were involved in the collision and which vehicle caried out the overtake.

Realistic case theory

Once established that it was impossible for the Mini to have been "alongside" the defendant's vehicle for any length of time, and given the potential speed of Mr Atkin's vehicle, it would be feasible to assume that when Mr B made his requisite checks, the Mini was still behind in its correct lane.

Therefore. at the point that Mr B made his checks, it was safe to proceed. Potentially in the next moments in time as the Audi is accelerating, the Mini pulled out and may have drawn partially alongside the Audi by which time Mr B would be correctly focussed on the road ahead.

Relate the case theory to the client's objectives and expectations

In determining criminal liability, the jury would be directed to consider the standard of the careful and competent driver. This is not a perfect standard, but rather an ordinary human standard.

If the Mini was still behind and on its correct side of the road when Mr B made his requisite checks, then the defendant had done nothing wrong and could not be found criminally liable.

To suggest that a driver might have anticipated that the Mini would or might overtake would be to demand a standard of driving that is higher than that of the careful and competent driver.

Draw up a strategy for the case

At trial we would be seeking to expose the lack of evidence relating to the relative positions of the vehicles and the proposition that the Mini was alongside the Audi before it pulled out.

We would seek to expose the actions of the co-defendant being inherently dangerous, particularly in relation to his speed and how that supported the scenario in which the Mini was still behind Mr B when he made his checks.

We would also expose the salient inconsistencies in the independent witness statements to undermine the prosecution case.

Ultimately, we would seek to persuade the jury that it is impossible to be sure about anything and that being sure of the defendant's guilt is the standard to be applied. We would argue that the prosecution had not proved their case beyond reasonable doubt and, as such, the only correct verdict to return would be one of not guilty.

Opportunity for further development, (if any)

I consider that I have a keen ability to analyse a case and identify potential lines of defence. I am known for having a tenacious approach and but am also realistic when presented with fresh evidence that may alter my views on the case strategy.