

Skills Element	Learning Outcome
<p>Professional Conduct and Ethics</p> <p><b>Evidence Provided:</b></p> <p><b>Obligations to the court</b></p> <p>Letter to [REDACTED] Court dated 21 July 2023</p> <p>Letter to court dated 26 January 2022 and Email to court dated 2 February 2022</p> <p><b>Obligations to the client</b></p> <p>Letter to client dated 10 May 2021</p> <p>Email to court dated 28 April 2022</p> <p>Telephone attendance note with client dated 27 March 2021</p> <p><b>Obligations to other lawyers</b></p> <p>Email out 7 July 2023 to police prosecution team</p> <p>Email threads between [REDACTED]</p> <p>Email thread with [REDACTED] – provision of material to solicitor dealing with civil aspect of case.</p>	<p>Conduct and Ethics</p> <p><b>Page in Portfolio</b></p> <p><b>132</b></p> <p><b>134 &amp; 136</b></p> <p><b>137</b></p> <p><b>143</b></p> <p><b>145</b></p> <p><b>147</b></p> <p><b>148</b></p> <p><b>150</b></p>
<p><b>How does this meet the outcome?</b></p> <p>I consider that I maintain an awareness of the conduct and behaviour required relating to my practice and that I take appropriate action in respect of my obligations to all parties including the court, client, other legal professionals and the public as situations arise. This requires exercising my judgment in applying the required standards and deciding on a course of action.</p> <p><b><u>Obligations to the Court</u></b></p> <p>Letter to [REDACTED] Court dated 21 July 2023</p>	

I represented a client who had been convicted and disqualified in absence. The police had sent single justice procedure papers to an incorrect address. We successfully applied to have the case re-opened and the defendant pleaded guilty on a basis. The matter was adjourned to 31 July 2023 for either a Newton Hearing or for sentence. The court directed that, in the interim the defence send to the Prosecution the defendant's basis of plea along with evidence in relation to speed and comments raised by an independent expert. We duly followed the direction of the court and then chased the Prosecution team for their response to the basis of plea. Out of caution we asked that their police officers be warned to attend should they be required to give evidence (in the event that the case proceeded to a Newton Hearing)

The police responded to say that that the next hearing was for case management only and that they would not be warning any witnesses to attend.

The defendant had already entered a plea and as such there was no need for a further case management hearing and the incurring of avoidable costs. Given that the defendant was paying privately for his representation, he did not want to incur the expense of an ineffective hearing.

I therefore wrote to the court to request that they direct the prosecution team to progress the matter prior to the hearing on 31 July so that substantive proceedings could take place on that date. We also asked the court to direct the prosecution to respond to comments raised by an independent expert.

### **Application**

It is important to keep the court informed when delays arise, particularly where this may endanger effective proceedings, thus adhering to the overriding objectives of the criminal procedure rules to deal with cases efficiently and effectively.

### **Letter to court dated 26 January 2022 and Email to court dated 2 February 2022**

We represented a client charged with careless driving. A trial had been adjourned on 28 September 2021 due to insufficient court time. At that hearing we had sought to renew a hearsay application in respect of a key defence witness. The District Judge had directed the defence to serve the renewed hearsay application by 26 October 2021 and the Crown were ordered to serve their response by 23 November 2021.

We duly complied with the court order to serve our renewed application and did so on 25 October 2021. However, the Prosecution failed to comply with the court's direction to serve a response. We notified the court of the delay by email copying in the CPS on 23 November 2021 in the hope that this might prompt action.

The trial had been adjourned on three previous occasions due to covid and insufficient court time. As the trial date neared, my concern was that, if the Crown failed to serve their objection sufficiently prior to the trial date, the parties would not be ready for trial and proceedings could, once more be adjourned.

I therefore wrote to the court to request that the case be listed for urgent mention so that the court could make an order to direct the Crown to respond. I suggested dates when defence counsel would be available to attend.

The court responded by listing the matter for a hearing on 25 February 2022. I considered this date to be unsuitable as this would probably not allow sufficient time for the Crown to respond in advance of the trial date which was listed on 8 March. Once again, the trial process could be endangered.

A further issue arose in that both Defence Counsel and myself were committed on another case on the date listed. My attendance was potentially necessary as on previous occasions I had been asked to give evidence in respect of my efforts to locate the witness. The renewed hearsay application comprised of actions I had further undertaken to locate the witness and so it was possibly that I would be required once more. I therefore sent a further email to the court dated 2 February 2022 requesting that the matter be listed urgently and once again provided Counsel's availability.

### **Application**

Having complied with the court direction to serve our renewed hearsay application within time, the Crown had failed to observe the direction of the court and the rules on the opposition of the introduction of hearsay evidence as set out in Rule 20.3 CrPR 2020.

The letter and email set out set out the timetable set, the non-compliance of the Crown and the effect further delay may have on these proceedings. This demonstrates an understanding of our primary and overriding duty to the court.

### **Obligations to the client**

#### **Letter to client dated 10 May 2021.**

*5.8 Provide prompt, clear and accurate information and advice to your client, advise them openly and honestly and keep them up to date with information they need about the work you are performing for them within agreed timescales.*

As a matter of routine in my practice, I draft advice letters at key stages in the case, particularly when decisions need to be made in respect of plea. Quite often that advice is not what the client wants to hear and so this must be approached carefully and with tact whilst remaining open and honest.

My client was charged with causing death by careless driving. The defendant/client had driven from a central reservation to cross the carriageway. As he emerged from the junction, he collided with a correctly proceeding motorcyclist who sadly died.

At a preliminary hearing, and following advice, the client had given no indication in relation to plea. This was to allow us time to canvass expert opinion once all the evidence from the prosecution had been disclosed.

Crucially, the defendant had not seen the motorcyclist at any stage. Whilst there were potential road furniture obstructions that may have impeded his view on the approach, these factors placed a greater requirement on the client to slow down and be prepared to stop. Instead of which the defendant had not stopped at the give way lines but rather continued at a constant speed without sufficiently slowing or stopping.

We obtained a report from an initial expert which was less than helpful. Fundamentally, when the defendant's view would have opened up, the motorcyclist was in the vicinity of the junction and ought to have been visible.

The client had difficulties accepting our advice and wanted us to explore other potential lines of defence in respect of conspicuity and visibility. The initial expert instructed was not receptive to these suggestions. In light of our duties to our clients, and in order to explore all avenues, we approached a second expert who specialised more in the human factors involved in the road user environment along with physiological and cognitive processes that play out in the driving dynamic. The second expert was also unable to provide us with anything to assist the defendant's case.

I wrote to the client to set out the findings of the expert and my opinion on defence prospects. In my view the defendant was likely to be convicted at trial and so it was important to advise him of this at the earliest opportunity and *before* the plea and trial preparation hearing which is the point at which the clock for credit for a guilty plea starts. My letter included the legal definition of the offence, the elements that are required to be satisfied, the burden and standard of proof and the application of the law to the matter. Finally, my advice in respect of the client's prospects of defending the case.

The client was receptive to the advice and he was able to enter a guilt plea at the Plea and Trial Preparation hearing.

#### **Email to court dated 28 April 2022**

*Act in my client's best interests*

My client was charged with an offence under the Dangerous Dogs Act, the allegation being that the client's dog had bitten a member of the public.

The proceedings were protracted partly due to delays in the court system following lockdown, prosecution failures and court capacity issues. A trial had been listed for in November 2021 but was adjourned on the day at the Crown's request and through no fault of the defendant. The trial was re-listed six months later on 20 April 2022. On 19 April 2022. We received an email from the court to advise that the trial could not be heard due to the matter having been listed in a "closed court".

This resulted in great distress to my client. The dog at the centre of the allegation had been in police incarceration since the allegation was made over 12 months earlier. The dog had been bought by the family for the daughter who suffered anxiety following the diagnosis of a heart condition.

Having chased the court persistently in the weeks that followed the matter having been vacated at short notice, we had heard nothing about a future date. The family were becoming increasingly distressed about the dog, particularly as a police dog examiner had reported that the dog looked underweight. I was genuinely concerned for my client's mental health.

Considering my duties to the client, I escalated the issue to the court manager setting out the various issues including defence counsel's availability, the history of the case and context of previous adjournments and the distress of the family in respect of the dog incarceration. I reminded the court of the over-riding objective of the criminal procedure rules and requested that the trial be listed as a matter of urgency.

#### **Telephone attendance note dated 27 March 2021**

*Maintain confidentiality in respect of your client's affairs except where to do so would conflict with the law or the Code or where your client explicitly authorises you to disclose confidential information.*

I represented a driver charged with careless driving and funded by his motor insurers. His case was listed for trial.

In a telephone conversation, he had disclosed to me further criminal driving offences carried out after the commission of the offence in which we represented him. As set out in our engagement letter with the insured, we are under an obligation to share information with the driver's insurer, particularly where that information may affect the decision to continue funding. We also have a duty of confidentiality to our clients and so under that duty I would be unable to disclose the information about further offences without his consent.

The attendance note of my telephone discussion with my insured client demonstrates that I understand the importance of maintaining confidentiality and the course to be taken where there are conflicting duties, ie our duty to the insurer.

I sought the client's instructions to enable me to disclose the information with his insurer. I set out the nature of our obligation to provide information to our insurer clients and my client's options under these circumstances so that any consent would be informed.

I also set out the process in the event that we had to withdraw from the case.

#### **Obligations to other lawyers**

Dealings with other lawyers should be characterised by courtesy, trust and good faith. In my dealings with prosecution lawyers, I am conscious to always adopt a very polite approach and to nurture a good relationship with trust.

#### **Email out 7 July 2023 to police prosecution team**

I wrote to canvass the withdrawal of a charge against my client prior to a hearing. The language used is polite and courteous.

#### **Email threads between [REDACTED]**

Since moving to [REDACTED], I have had several clients from when I was employed [REDACTED] [REDACTED] contact me directly and/or complete the contact form on [REDACTED] to endeavour to contact me to ask me to take over their legal representation.

I am conscious of my professional conduct and would not engage in any discussions regarding representation with the client of another firm. Therefore, on each occasion, I have referred these requests to my supervisor, [REDACTED] has then followed the appropriate course of action.

**Email thread with [REDACTED] of material to solicitor dealing with civil aspect of case.**

After my employment with [REDACTED] terminated, one of the clients who sought my services as per the above was transferred to [REDACTED] and I prepared his case for trial at [REDACTED] Court in February 2023.

In July 2023 I was approached by the solicitor with conduct of the civil claim with a request to provide certain prosecution evidence.

I responded promptly and courteously providing all the material requested.

#### **Money Laundering legislation and regulation in practice**

I take part in regular anti money laundering training and recognise that due diligence is crucial in preventing criminals from using legal services to launder money or finance illegal activities. This is fundamental in maintaining high standards of professional and personal conduct and justifying public trust.

We are a private criminal defence firm, regularly onboarding clients who will be paying privately for their representation. Therefore, it is fundamental to conduct AML checks when onboarding new clients.

I was pivotal in the implementation of Thirdfort, a dedicated platform through which all new clients are onboarded and their identification checked, documents verified and individuals screened for PEPs and Sanctions. I researched the service provided by Thirdfort and was responsible for the onboarding of the platform.

#### **Opportunity for further development, (if any)**

None identified

#### **Completion date:**

6 November 2023

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]