

community legal service

Support

consultancy line: 0870 7700 447
email: cls.support@asauk.org.uk

Conflict of Interest

Quality Mark Briefing No.4

April 15th 2002

This briefing applies to the Quality Mark
General and Specialist Help Levels

advice
services
alliance

4 Deans Court, St Paul's Churchyard, London EC4V 5AA

Tel: 020 7236 6022

Fax: 020 7248 3367

The Advice Services Alliance is a Company limited by guarantee, registered in England and Wales No. 3533317, registered office as above.

This project is made possible by funding from the Legal Services Commission
with additional support from the National Lottery Charities Board

DISCLAIMER

This briefing has been checked and agreed for accuracy by the Legal Services Commission (LSC). It is not a substitute for reading the relevant documentation in full nor does it constitute legal advice. The Quality Mark is still evolving, and therefore managers and staff will need to take responsibility for ensuring that they comply with the latest requirements at their particular level. Each briefing reflects the position at the date it was published. Organisations should get further up-to-date advice on specific topics covered in briefings either from their network, their LSC regional office or CLS Support.

CLS Support is run by the Advice Services Alliance. ASA is the representative body for national advice networks in the UK. ASA is independent of the Legal Services Commission.

© ASA 2002

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form or by any means, without permission from ASA. Policies and procedures have been freely donated by organisations for you to use and amend for your own purposes. They must not be sold for commercial purposes.

1 Introduction

- 1.1 This briefing describes the Legal Services Commission's (LSC) Quality Mark requirement(s) to identify and deal with any conflict of interest that may arise in the course of acting for a client. It also discusses the kinds of conflicts of interest that can occur in advice work and suggests possible approaches to dealing with these situations.
- 1.2 The documents referred to in this briefing are:
 - The **Quality Mark standard** (first edition April 2000) ('QMS')
 - The **General Help standard workbook** (first edition April 2000) ('GHW')
 - The **Specialist Quality Mark Standard** (first edition April 2002) ('SQM')
 - The **Specialist Quality Mark Guidance** (first edition April 2002) ('SQM Guidance')
- 1.3 The Specialist Quality Mark (SQM) replaces both NfP and solicitor versions of the Legal Services Commission's previous quality standard for specialist services – the Legal Aid Franchise Quality Assurance Standard (LAFQAS).
- 1.4 Organisations with an existing LSC contract will be audited against the SQM from April 30th 2002, although new requirements and existing requirements outlined in List 2 (see Appendix 3 of the SQM) will only be audited from October 2002. Prior to October 2002, failure to comply with any new requirement or List 2 clarifications will be raised as an observation only.
- 1.5 Organisations wishing to apply for an SQM for the first time should use the first edition of the SQM now available from all LSC Regional Offices and on the LSC website www.legalservices.gov.uk.
- 1.6 The LSC's requirements relating to conflict of interest can be found at E1.3 in the General Help standard and E1.2 (a) in the Specialist standard.
- 1.7 Where the briefing refers to requirements that apply at the General Help level, these requirements also apply at the General Help with Casework level unless stated otherwise.

2 The Quality Mark requirements

Information standard

- 2.1 There are no Quality Mark requirements regarding conflict of interest in the Information standard.

General Help

- 2.2 The General Help standard requires all organisations to have: 'procedures to identify and deal with any conflict of interest in acting for a client' (E1.3).
- 2.3 Passing on accurate information to a client without giving them any personalised advice or explaining the options available to them is not within the LSC's definition of General Help. Instead, this kind of activity comes within the definition of Assisted Information. If

your organisation only does this kind of work then you will need to apply for the Assisted Information Quality Mark and you will not require a conflict of interest procedure at all (see paragraph 2.1 above).

- 2.4 The General Help level guidance emphasises that identification of a conflict or potential conflict of interest should take place as early as possible and that you should clearly describe how the process is undertaken and who is responsible for doing it.
- 2.5 As a minimum, your written policy should cover the following situations:
- acting for both sides in a dispute;
 - where the client's case involves a member of staff or the management committee, eg as a party or witness;
 - the adviser or other member of staff knows the client's case is based on false information;
 - the client's case involves or potentially involves undertaking action against your organisation or a funder (see E1.3 Guidance).

SQM requirements

- 2.6 The Specialist Quality Mark, which replaces LAFQAS as the specialist standard from April 2002, requires that: 'Documented procedures are effective in identifying potential conflicts of interest' (E1.2(a) SQM).
- 2.7 In addition:
- 'Your procedure **must** identify the process you follow,
 - and **from October 2002**, it **must** contain details about how to deal with specific circumstances that are likely to occur (E1.2 (a) Definitions - see SQM guidance for further details)
 - You **must** also have evidence confirming the date(s) on which the conflict of interest check(s) was completed.' (E1.2 (a) Definitions)
- 2.8 An auditor will expect your procedure to deal with the same circumstances listed at paragraph 2.5 above unless you can give them a good reason why any of them should be excluded.
- 2.9 You may want to add to this list. In guidance the LSC says: 'You may know of other types of conflict of interest that are common to cases you take, or that have arisen in the past, and want to cover these in addition, **even if to confirm that you would not act** in such a situation' (E1.2(a) SQM guidance).
- 2.10 The SQM guidance suggests there may be situations where you might continue to act for a client even though a conflict of interest has been identified, but points out that this is subject to 'any code of conduct by which you are professionally bound or contrary to common law'. It suggests that 'your procedure should require the client to be notified (and outline the extent to which the conflict should be detailed), other than in exceptional circumstances (which should also be described in the procedure and which should require justification in writing on the file)' (E1.2 (a) SQM guidance).

3 What is a conflict of interest?

- 3.1 A conflict of interest arises either where you cannot give independent and impartial advice to a client for a particular reason or where you are **seen** as not being able to give independent and impartial advice.
- 3.2 For advice to be impartial, there must be no factor influencing the advice given to an individual client other than that client's best interests, and neither the adviser nor the organisation can have any significant personal interest in the outcome of the enquiry or case.
- 3.3 At both the General Help and Specialist levels of the Quality Mark the emphasis is on spotting these situations as early as possible, being alert to circumstances that might give rise to a conflict of interest, and taking avoiding or preventative action. However, conflicts of interest are not always easy to identify, eg one party may have reverted to their surname at birth and changed addresses. Many advisers will have had the experience of identifying a conflict of interest through a chance conversation over the photocopier! Hopefully, implementing a conflict of interest procedure will help reduce the number of times this happens.
- 3.4 It is not appropriate to avoid identifying a conflict of interest because you are concerned the outcome may be to limit, withdraw or deny your services to a client. Your approach to conflict of interest will involve trying to reconcile the different aims of making your service available to anyone who needs it and maintaining your ability to provide and be seen to be providing independent and impartial advice. You may decide that you can continue to advise clients where a conflict or potential conflict of interest arises by putting safeguards in place and ensuring that matters are dealt with separately and confidentially (see paragraphs 6.2 – 6.8 below).

4 Why is it important to identify a potential conflict of interest?

- 4.1 Conflicts of interest need to be identified and dealt with so that:
- your advice is always independent and impartial and seen to be so;
 - your organisation is protected from allegations of bias and lack of independence;
 - neither existing nor potential clients lose confidence in your organisation;
 - confidentiality is not jeopardised.
- 4.2 Any client who thinks they have grounds for alleging that your organisation has failed to give impartial or unbiased advice can make a complaint using your complaints procedure. If they have suffered a more serious, quantifiable loss, this may result in a claim being made against your professional indemnity insurance. Early identification and resolution of conflicts and potential conflicts of interest is good risk management and should achieve the aims set out in paragraph 4.1 above.

5 Situations where a conflict of interest may arise

- 5.1 Most of these situations require the exercise of professional judgement. The facts of each case will vary, as will the seriousness of the conflict or potential conflict of interest.

This in turn will influence what you decide to do in order to deal with the conflict you have identified. Below we give some examples of situations in which a conflict of interest might arise and make some suggestions about how to deal with them.

5.2 Example 1

An employer approaches your organisation for advice on how to dismiss an employee. A few days later, the employee also approaches your organisation for advice on how to avoid being dismissed.

A similar situation arises where a landlord asks for advice on how to evict a tenant. The tenant then approaches you and asks for advice on how to avoid eviction.

There is a conflict of interest between the two clients in both these cases. If each client saw a different adviser and each adviser was unaware that the other party had also approached their organisation for advice, then you can be satisfied that both were able to provide independent and impartial advice to their own clients.

A problem arises if the two clients discover that they have both received advice from the same organisation (eg by telling each other they have sought advice and where they got it from). Both clients might be concerned that the advice they received was biased in some way. Your organisation is laying itself open to allegations of partiality, particularly if one of the clients received unwelcome advice. The advice may **actually have been** impartial but it may not be **seen to be so**.

Some organisations have a policy of never advising certain parties to a dispute, eg landlords and/or employers, and for them the situation described in this example is unlikely, if ever, to arise. If you are one of these organisations it is helpful to include a statement to this effect in your written policy, eg: 'There are some enquiries/cases where a conflict of interest cannot arise because XYZ Advice Centre will not be advising the other party: Housing – where the other party is the landlord; Employment – where the other party is the employer'.

There are other types of work where you will never advise the other party to a dispute, eg where the other party is the Benefits Agency, a local authority or the Home Office. Again, a simple statement to this effect in your procedure will help clarify that no conflict of interest check is necessary in these cases.

5.3 Example 2

You are approached by two or more clients either separately or together, eg husband and wife, partners, co-tenants, about the same matter. Some of the types of conflict that might arise in this situation are listed in the box below.

In these circumstances you should identify whether the case involves a conflict or potential conflict of interest as early as possible. You owe a duty to each person and must advise each individual what is in their interests. To identify whether there is a conflict or potential conflict of interest we suggest it is helpful to think about what would happen if you were acting for only one of the clients. Would your advice be any different? Do the clients have different interests? Has one of them given you a piece of information that would impact on the advice you give the other, if you were at liberty to disclose it? If the answer to any one of these questions is positive, then a conflict of interest has arisen.

It is good practice to signpost or refer as appropriate in these situations, and in any event the requirements of your national network or professional body such as the Law Society may insist that you do so.

Subject Area:	Type of conflict that might arise:
Housing	<ul style="list-style-type: none"> • Where there are proceedings against joint tenants for rent arrears; one party has left and wants to give up the tenancy and the other wants to keep it.
Employment	<ul style="list-style-type: none"> • Where two employees have sought your advice; both have been sacked for dishonesty and one wants to argue that the other was dishonest as part of his/her grounds for claiming unfair dismissal.
Welfare Benefits	<ul style="list-style-type: none"> • Where a relationship has broken down and one party is trying to arrange payment of separate benefits whereas the other party is trying to argue that they are still living in the same household.
Debt	<ul style="list-style-type: none"> • Where a relationship has broken down and each party is arguing that the other is liable for certain debts such as fuel, water charges etc.
Immigration	<ul style="list-style-type: none"> • Where different members of a family are presenting inconsistent arguments and facts in support of an application for leave to remain or for asylum.

5.4 Example 3

Someone approaches you for debt advice. It turns out that one of their creditors is a member of the management committee. The adviser will be asked to try and negotiate a lower repayment rate with this committee member.

There is a conflict of interest between the adviser and the client. The committee member is one of the adviser's employers and/or managers and potentially able to exert influence on the adviser in that capacity. The organisation cannot be seen to be providing impartial advice and help to the client. In order for the organisation to be able to do so, the committee member may need to resign.

If the committee member agrees to resign and if you decide to continue advising the client, you should disclose the conflict to the client, explain that the committee member has stood down, that committee members do not have access to case records and reassure them that the former committee member's role has no effect on the service they will receive. Assuming the client consents to you continuing to act for them, we suggest it would be good practice to note their agreement on your case record/file. If the committee member is not willing to stand down (or you do not wish to ask him/her to do so because, eg, they bring scarce and much-needed skills to your organisation and you can't afford to lose them) then you should signpost or refer the client elsewhere.

5.5 Example 4

Your organisation is approached by someone who wants advice on their entitlement to Income Support and help with completing a claim form. The client tells you that they have no income. The adviser who sees them knows that they work part-time in the local garage where the adviser buys petrol.

There is a conflict of interest between the adviser and the client. If the adviser were to provide any assistance to the client in falsely completing a claim form, the adviser would be committing a criminal offence. The client could be referred to a different adviser in the organisation but that would involve the ('witness') adviser putting a colleague in a difficult position. The client can either complete the form him or herself or be signposted/referred elsewhere for assistance. The adviser should make a file note recording the fact that the client was advised against providing false information.

5.6 Example 5

A client approaches your organisation for advice about a dispute with his landlord. Unknown to the adviser who sees the client, the landlord is the partner/husband of another adviser.

The advice will be impartial so long as the adviser dealing with the client remains unaware that the landlord is related to a colleague. However, if the client discovers that a colleague of the adviser is related to the landlord, the client may not be satisfied that the advice was impartial.

There is a conflict of interest between the adviser and the client. You can deal with this conflict either by signposting/referring the client elsewhere, or if that is impossible, and subject to obtaining the client's consent, by erecting a 'wall' around the case from which the adviser related to the landlord is excluded. The third option is to ask the adviser to

resign. This is unlikely to be appropriate unless the adviser's partner/husband is a major landlord in the area and there may well be recurrent conflicts of the same kind.

Even if you opt for erecting a wall around the case, you need to decide what limits there are on the action you will take on the client's behalf, eg it would be inappropriate to represent the client in proceedings against the adviser's partner/wife/husband. If you feel embarrassed about advising the client to take court proceedings, then you cannot provide impartial advice and the client must be referred elsewhere.

Although such potential conflicts of interest may arise rarely, one way of helping you to identify them would be for staff and committee members to make a list of their interests that may affect their role. For example, in an organisation providing housing advice, a link between an adviser or a committee member and any landlord may give rise to a potential conflict.

In an organisation giving welfare benefits advice, membership of an Appeal Tribunal may give rise to a conflict if one of your organisation's cases gets listed before one of your advisers! The adviser will need to stand down from that particular case.

5.7 Example 6

A client wants advice about legal action against her bank. The bank funds your money advice work.

There is a potential conflict of interest between the client and your organisation. However, the principle of independence requires that you must be free to provide advice in the client's interests, without regard to those of your funder.

Nevertheless, if the client does not like the advice she receives and discovers that the bank funds you, she may allege that your advice was affected by your relationship with the bank. You should therefore deal with this potential conflict by explaining to the client that although the bank is a funder, your advice cannot be influenced by them and you are free to advise in her best interests. If you have a funding agreement that refers to your independence, this can be quoted to reassure the client.

Some organisations include a policy statement in the introduction to their conflict of interest procedure confirming that they will not accept funding or donations from creditors that would affect their ability to remain independent in their negotiations on behalf of a client. You may want to consider including a similar statement.

If at any later stage there is any risk or threat of withdrawal of funding, or the adviser feels (rightly or wrongly) that advising someone to take action against a funder puts the organisation in an embarrassing position, you cannot give impartial advice and should refer the client elsewhere. However, an adviser who finds themselves in this situation should discuss their concerns with their manager in case they are unfounded before they refer a client elsewhere.

5.8 Example 7

A client wants advice about a dispute with an organisation represented on your management committee. (In order to deal with this kind of eventuality it is helpful if advisers are given a list of organisations where a potential conflict may arise.)

There is a conflict of interest between your organisation and the client. Again the adviser may feel confident that they can give impartial advice, but if the client discovers that the other organisation or a person involved with that organisation is on your committee, s/he may allege that this affected the advice provided.

Your approach to dealing with this conflict may depend on how close a connection there is and/or is likely to be between the individual representing the other organisation on your committee and the dispute. Although you could resolve the conflict by signposting/referring the client elsewhere, your first responsibility is to the client.

If the person on your committee has any involvement in the subject matter of the dispute, and you want to continue to advise the client rather than refer them on, the committee member may need to resign.

Where the client has a dispute with a large organisation like a local authority or other large employer such as a Health Trust or local factory, the representative on your committee may have had no involvement in the matter. If this is so, you may just decide to inform the client that the organisation is represented on your committee, explain that the particular representative has no connection with the dispute and ask them to decide whether they want you to continue to act for them. Assuming they do, we suggest you note their agreement on your case record/file.

There is no difference between a management committee member who formally represents, eg, a local authority as one of your funding bodies, and someone who happens to work for a local authority but is on the committee in a lay capacity because they think it is a worthwhile activity. In either case, if the person has any involvement in the subject matter of the dispute, and you want to continue to advise the client rather than signpost/refer them on, they should resign. However, if they don't then we suggest you take the same steps outlined in the previous paragraph.

The fact that your organisation has, eg, one or more local authority councillors on its management committee does **not** of itself mean that your advisers cannot advise and/or act on behalf of a client in any dispute with or claim against that local authority.

5.9 Example 8

If your organisation is not solely an advice provider but also provides mediation or counselling services, there are likely to be occasions when, having given legal advice to one partner or party to a dispute, you are asked to offer both of them mediation or counselling. There is a potential conflict of interest.

We suggest that you should not act as a mediator or counsellor in these circumstances unless you can demonstrate that the information given by your existing or former client to the advice service part of your organisation has no bearing on the issues to be covered in the mediation or counselling. In order to then provide mediation or counselling services you should disclose (with the relevant individual's consent) the fact of one party's contact with the advice service to the other party and obtain both parties consent to the proposed mediation or counselling.

The LSC's final version of the Mediation Quality Mark should be available in June 2002. We expect that it will require those organisations applying for the Mediation Quality Mark to respond to the circumstances described above in a similar way.

5.10 Example 9

Your organisation is approached by client A who wants advice about a problem they have with a former client of yours, client B. There is a potential conflict of interest. If you have confidential information about former client B that is relevant to A's case then we suggest you should not advise client A against client B unless you can demonstrate that the information given you by client B has no bearing on the issues to be covered in the advice to client A. **(Your national network may have specific guidance on this issue. This is something you will need to investigate before you finalise your conflict of interest procedure. Solicitors must observe Practice Rule 15.02 in The Law Society's Guide to the Professional Conduct of Solicitors.)**

6 What action might you take once you have identified a potential conflict of interest?

- 6.1 Although at both General Help and Specialist levels your procedure must set out what action you are to take once you have identified a conflict of interest, at neither level does the LSC specify what action should be taken.
- 6.2 Where a conflict of interest involves two clients, we suggest that you have two options. You can either signpost/refer one or both clients to another provider, or, if no alternate source of advice exists, you **may** be able to continue advising both clients but only in circumstances where a 'wall' protecting the respective confidentiality of both clients is erected between the different advisers advising each client. **(Your national network, professional body such as the Law Society or management committee may or may not find this approach acceptable. This is something you will need to investigate before you finalise your conflict of interest procedure.)**
- 6.3 In our view, the better solution is to signpost or refer at least one client to another organisation. If you are only signposting/referring one client elsewhere, you have to decide which client that will be. You could make that decision on a 'last in first out' basis and always signpost or refer the client who approaches you last. Alternatively, you could decide which client is best able to obtain advice elsewhere, eg because of higher income, access to car etc. You might also wish to take account of whether one client has been a regular client in the past.
- 6.4 In some cases you may decide you need to signpost or refer both clients to separate organisations. For example, different workers in your organisation may have started to act for A and B who are parties to a dispute. You quickly realise this is happening and that there is a conflict of interest, so you refer B to another organisation. However, while advising B you have come into possession of information which B does not want A to know. If you carry on advising A, B may feel A has gained an unfair advantage. You may wish to refer A as well. If you do not, B may accuse you of partiality.
- 6.5 If signposting or referral really is not possible, eg because you are the only advice provider in your area, then consider erecting a 'wall' between the advisers acting for the two clients.
- 6.6 This involves getting a different adviser to deal with each client, and ensuring both that there is no discussion or contact about the case between the advisers and also that they

have different supervisors. To protect your organisation from allegations of failing to be impartial, you should:

- tell each client that the other one has also approached your organisation for advice;
- explain the arrangements you propose putting in place to protect the respective confidentiality of each client (eg separate supervisors etc.);
- obtain each client's consent to both of them being advised by your organisation.

(NB: This kind of arrangement is unlikely to be appropriate in cases involving domestic violence. In these cases one client should not be told of the other's visit. Such breaches of confidentiality could result in further violence. We suggest signposting or referral is the better course of action when dealing with a conflict or potential conflict of interest in a case involving domestic violence. Depending on which client you decide to signpost/refer, it may be necessary to explain only that your organisation cannot take their case further without giving any reason.)

- 6.7 In practice it may be more appropriate for the manager to handle this discussion with the clients. If you proceed with the arrangement, a clear file note recording the outcome of the conversation with each client is essential and you will usually want to confirm the position in a letter to each client.
- 6.8 The usual rule of confidentiality which dictates that the fact of a visit to your organisation should not be disclosed to a third party without the client's consent is overridden in these circumstances so that you can continue to advise both clients. Even then you may reach a point where you feel you can no longer advise both parties. In our view, this point will **always** have been reached where litigation between the clients is being actively contemplated or has started.
- 6.9 Sometimes the conflict or potential conflict of interest involves a staff or management committee member. Possible remedies in this type of situation are discussed in the examples at paragraphs 5.4, 5.5, 5.6 & 5.8 above.

7 Designing your own conflict of interest procedure

- 7.1 Obtain an up-to-date copy of any rules or guidance from your own national network or professional body. This may include a draft procedure you can adapt to your own needs.
- 7.2 Be clear about what you define as a 'conflict of interest' within your organisation. Try and identify the types of situation where an adviser may be unable to provide independent and impartial advice or where a client may have reason to doubt that the advice s/he receives is independent or impartial. **They might not necessarily be either numerous or complex in the context of your own particular service.**
- 7.3 Consider whether you will deal with conflicts of interest differently for one-off advice (whether face-to-face or telephone advice) or Level i advice at Specialist level where they may not be as easy to identify as when undertaking casework. You may decide that the trigger point for routinely doing a conflict of interest check is if or when you start to do casework. However, this does **not** preclude the need to be alert for conflicts of interest before then. So, if while giving advice over the telephone or one-off advice, you become aware that there is a conflict or potential conflict of interest, you should take action in accordance with your conflict of interest procedure.

- 7.4 Are you going to ask staff, volunteers and management committee members to complete a Register of Interests? (see paragraph 5.6 above)
- 7.5 If you are a multi-office organisation, should your procedure for identifying a conflict of interest include making checks at the other offices? (see SQM guidance page 69)
- 7.6 Consider whether there are any circumstances in which your organisation would continue to advise and/or act for a client (or both clients) where a conflict of interest has been identified. If so, what safeguards will you put in place to protect both the client(s) and the organisation? When and what will you tell the client(s)? What level of service will you provide? For example, you may decide that your organisation cannot write letters on one client's behalf to the other or handle negotiations between the clients.
- 7.7 Most conflicts or potential conflicts of interest between individuals can be checked by recording the other party's name and address and searching against those details in your database/card index of both current and closed files to see if they have ever approached you for advice. You may also want to check against an up-to-date list of staff and management committee names.
- 7.8 Checking address and/or postcode in addition to name will be particularly important in parts of England and Wales where clients often have one of a small number of common last names or amongst client groups where, eg, all women have the same gender-specific last name.
- 7.9 You might want to consider keeping a current list of known potential conflicts of interest handy for checking by advisers seeing new clients. This might consist of the name and address of the other party and the initials of the adviser who has details of the conflict of interest. If it looks possible that the client you are about to see is on the list, you might have time to get details of the conflict from the other adviser and consider how to deal with it before meeting the client.
- 7.10 The Specialist Quality Mark requires that you have evidence confirming the date(s) on which the conflict of interest check(s) was completed. Although there is no similar requirement at General Help level, we suggest it would be good practice to adopt the same system. You might want to provide this evidence by including a box similar to the one below somewhere on your file, eg on your initial advice sheet:

COI check

Name checked	Date

- 7.11 Decide who makes the decision about what to do when a conflict or potential conflict is identified, eg supervisor, manager, collective staff team.
- 7.12 Consider what approach you will take, and when, for resolving conflicts, eg if you need to signpost/refer one client how will you decide which one should go elsewhere?
- 7.13 Do you need to make periodic conflict of interest checks in some ongoing cases?
- 7.14 Consider whether to ensure that staff conducting file reviews use the opportunity to give a second opinion on whether a conflict or potential conflict of interest either exists or could arise in each case under review. You may also want to ensure reviewers check that if a conflict of interest has been identified it has been dealt with appropriately within the parameters of your conflict of interest procedure.

8 Other Useful Guidance

- 8.1 Shelter's "Quality Standards 2001" has guidance on 'Preventing Conflict of Interest' at page 53.
- 8.2 Age Concern published "Meeting the Quality Mark: a Guide to Complying with the Community Legal Service Requirements" in September 2000. It contains a sample conflict of interest procedure at page 19.
- 8.3 FIAC has a briefing on 'Independence and conflict of interest' in the "Quality Briefings" volume of "Achieving Excellence" at page 139.
- 8.4 NACAB has produced the "Community Legal Service Quality Manual Kit" (designed to comply with the General Help standard) and the "Office Manual Kit" (designed to comply with the SQM). Both include a sample conflict of interest procedure at section 5. NACAB's guidance on conflicts of interest can be found on BMIS (Bureau Management Information System) at www.bmis.org.uk.
- 8.5 The Law Society's rules and guidance on conflict of interests can be found in chapter 15 of their online guide to professional conduct at www.lawsoc.org.uk. Chapter 22 of the same guide sets out the rules and guidance on alternative dispute resolution. Annexed to this chapter are the Codes of Practice on Civil/Commercial Mediation and Family Mediation. They each contain the same useful definition of impartiality that we have drawn on in preparing this briefing.

Appendix 1: Examples of Conflict of Interest procedures

Attached are sample Conflict of Interest procedures in day-to-day use in organisations with the Quality Mark. These policies have been provided by: **Hertfordshire Housing Aid Centre**, **Terrence Higgins Trust** and **Kiran Asian Women's Aid**. We would like to thank these organisations for their permission to reproduce their procedures. We have included them to help you avoid re-inventing the wheel when you come to draw up or review your own procedures.

However, it is important not to assume that procedures from another organisation will transfer directly into your own with satisfactory results. Whilst it is tempting to think that if a procedure has passed an LSC audit for one organisation, copying it will produce the same result for you, you may end up committing yourself to a procedure that is simply not appropriate for your organisation.

So, we suggest you use the sample procedures to get an idea of:

- the 'look' of the document - layout, use of standard forms etc.
- new ideas for good practice
- other organisation's working practices and how they have documented them
- whether it might be useful to follow those (or similar) working practices in your own organisation

Hertfordshire HAC

Conflicts of interest

The HAC cannot knowingly advise both parties in a dispute as this is likely to result in a conflict of interest which could jeopardise confidentiality and the best interests of the clients. It is not always possible to check conflict of interest before advising clients as many cases are dealt with in outreach surgeries and over the telephone. However, conflict of interest must be checked as soon as the initial record sheet is completed and the file registered in accordance with the procedure in 14.5.

The most common situations where there may be a potential conflict of interest are:

- Landlord/tenant
- Relationship breakdown
- Joint tenants
- Neighbour disputes

If the caseworker is in any doubt about whether there may be a conflict of interest, s/he will consult with the manager.

If a potential conflict of interest is identified, normally the client who approached first will continue to be advised. Third parties will be notified by the caseworker that the HAC cannot assist them and offered referral to another agency. Where possible, this will be done without breaching confidentiality but there may be occasions when the HAC has to say that it is unable to help because of a confidentiality issue.

Shelter's charitable status and objectives would normally make it inappropriate to give on-going advice and assistance to landlords. In most cases, landlords can be given basic advice on rights, responsibilities and good practice, and referred to a solicitor or other appropriate agency.

14.5 Identifying conflicts of interest

Certain cases may give rise to a conflict of interest. Where a third party is clearly involved, the following procedure should be followed:

- The name and if possible the address of the third party should be obtained and recorded on the top right hand corner of the initial record sheet.
- The caseworker then makes out a separate record, on red case cards, noting the name(s) and if possible, the address of the third party. Underneath is recorded the name of the original client and her/his File reference number.
- The third party records are filed alphabetically and stored in the central card box.
- It is the responsibility of each caseworker to check the third party record file for any new case and to note any third party names to identify any apparent conflict of interest.
- This check should be updated if any new parties become involved in the case.

Caseworkers are responsible for identifying when a conflict of interest is likely to arise and when it is appropriate to record a third party.

5.1 CONFLICT OF INTEREST

The Specialist Advice Centre is bound by the professional conduct rules with regard to conflict of interest and THT's policy of impartiality and independence.

5.1.1 WHEN MIGHT CONFLICT ARISE

Examples of when a conflict of interest may arise are:

- housing, money and other issues after relationship breakdown
- landlord and tenant cases (generally, the Specialist Advice Centre does not act for landlords, however there are some less formal arrangements, such as lodging and sub-letting)
- harassment

In all of these types of cases a conflict check must be carried out before the case is taken on.

Additionally, it may become apparent during the progress of the case that there is a potential conflict of interest. See para 5.1.5 for how to proceed if this is the case.

5.1.2 PROCEDURE TO AVOID CONFLICT OF INTEREST

This procedure applies to new enquirers and should be carried out before the case is taken on, if there is a likelihood of a conflict as in the types of cases listed in 5.1.1. The responsibility to ensure that the conflict check has been made is the adviser's. The adviser must inform the client that a conflict check may be carried out.

5.1.3 NAME CHECK

The adviser must find out who the other parties may be in relation to the client's enquiry in order to establish whether there might be a conflict. The client must be asked whether s/he knows whether the other party has taken advice on the matter and if so, from whom.

The adviser must pass the client's name and name(s) of any third party(ies) to the administrative staff for a conflict check. The administrative staff will check on the computer database and report back to the adviser within one working day as to whether there is a potential conflict and why.

The adviser must note on the File Opening form (FO1), the date of the check. If the check has revealed a potential conflict, the adviser will make further investigation. This may involve the adviser speaking to the client to obtain further details about the other party. A record of this must be made on the file. If the adviser believes that there is a potential conflict of interest and that the Specialist Advice Centre is unable to act, it should be discussed with the casework manager or supervisor. All decisions must be fully recorded on the file.

5.1.4 DEALING WITH CONFLICT OF INTEREST

Where there is a conflict of interest, this must be explained to the client who should be referred elsewhere.

A conflict of interest in this case may conflict with the usual rule of confidentiality about users of the Trust's services, although no detailed information would be given. If this is the case, the adviser should refer the case to the Casework Manager for guidance.

5.1.5 CONFLICT DURING A CASE

If conflict arises between parties after the case has begun, ideally the Specialist Advice Centre should cease to act in the matter. The adviser must refer the case to the Casework Manager to consider whether:

- the Specialist Advice Centre is able to continue to act for one party
- the Specialist Advice Centre can refer one party outside the organisation
- the Specialist Advice Centre has to cease acting for both parties

The details of the conflict and any decision made must be noted on the case record.

CONFLICT OF INTEREST POLICY

Date adopted:

October 2001

Date for review:

October 2002

MC Signature:

Scope & Coverage:

This policy covers all instances of conflict of interest which could arise in the course of delivering services, including advice. It applies to all staff and management committee members.

Conflict of Interest Policy

1. Introduction

The purpose of this policy is to ensure that members of the Management Committee, staff and volunteers act at all times in the best interests of Kiran Asian Women's Aid, even where this may conflict with a personal interest or the interest of another organisation which they represent or with which they are involved. The Management Committee reserves the right to refuse the membership at any time of year.

2. Residents

2.1 Kiran Asian Women's Aid will endeavour, where possible, to avoid referrals to agencies and services which may compromise the safety, security and welfare of women and children escaping domestic violence.

2.2 If a woman seeks accommodation from Kiran Asian Women's Aid and there is a concern that a current resident, staff member, member of the Management Committee or volunteer may know the person, she will be referred on to alternative accommodation to maintain confidentiality and security. Reasons for this action will be given, mindful of the need to maintain confidentiality of all parties concerned.

2.3 The Admissions Policy of Kiran Asian Women's Aid outlines the procedure to follow when referring a woman onto alternative accommodation or services as a result of 2.2 above.

3. Management Committee

3.1 Annually, all Management Committee Members will be asked to complete and sign a "Declaration of Interests" form to document any outside interests which might potentially be in conflict with the aims and objectives of Kiran Asian Women's Aid. These will be compiled into a register of Management Committee Interests which should be made available to the Manager and all members of the Management Committee.

3.2 If an issue is raised in the Management Committee in which a Management Committee member has a direct financial interest, she should immediately declare the nature of her interest and withdraw from the room for the duration of discussion on this matter, unless given dispensation to speak by other members of the Management Committee.

3.3 If a member of the Management Committee has any interest in a matter under discussion which creates a real danger of bias (i.e. the interest and decision relating to it affects this Management Committee member and/or her family or close associates,) the member must immediately declare the nature of her interest. The Management Committee member must be heard and then asked to leave the room. She will not have a right to vote on that issue.

This member may be excluded from part of Management Committee proceedings if the Management Committee votes for this by a simple majority.

3.4 If there is reason to believe that a member of the Management Committee has not observed the above procedure, the Chair or Management Committee will enact the relevant Grievance Procedure against that member. Where the member in question is the Chair of the Management Committee, any other member of the Management Committee may enact the relevant Grievance Procedure against them.

4 Composition of the Management Committee

4.1 No one constituency should dominate the membership of the committee. The Centre will aim to have a diverse committee with members representing other organizations, users of the service, individuals with particular skills and staff and funders as observers. All Management Committee members will be women.

4.2 Staff members attending as observers should not be present for any decision which affects their terms and conditions or concerns personnel matters.

4.3 The Chair of the Management committee will be responsible for ensuring the above aims are carried out.

5. Staff and volunteers

5.1 On induction all paid and volunteer staff will be asked to complete and sign a declaration of interests form.

6. The advice service

6.1 Advisers should also be alert to potential conflicts of interest when the user first relates their enquiry and should ask if there is any chance the other party could have sought advice from the service - this is not likely to occur as advice is only given to residents and women facing domestic violence.

6.2 The central record of advice clients should be consulted to look for obvious duplications of names and addresses if a conflict of interest is suspected.

6.3 If the centre is already involved in an enquiry which concerns the user the conflict of interest should be explained and the user should be directed to another agency for help. Refer to the signposting/referral policy for further guidance.

6.4 If we discover that we have been advising both parties the Manager should be informed. KAWA should ideally cease to act in the matter and refer each user to a different agency. If this is not possible the following should be followed:

6.5 Both users will be told that if the case needs to go to court the centre will cease to advise both parties and if this is a possibility the advisers should consider referral to a solicitor at the earliest opportunity.

6.6 The further guidance which follows outlines other possible conflict of interest scenarios. If it is suspected that any of these situations applies the matter should be discussed with the Manager as soon as possible.

Where a conflict of interest might arise - further guidance

Examples of where a conflict might arise include:

- (a) A user consults us following a relationship separation and has joint debts. The ex – partner then consults us about the same debts.

This situation will not arise as KAWA only advises one partner in a relationship.

- (b) A landlord asks for advice on how to evict a tenant. The tenant then approaches the centre for advice on how to avoid eviction.

KAWA do not advise landlords

- (c) A resident approaches the centre for advice on entitlement to income support and help with completing an income support application on the grounds that they have no income. We are aware that they work part time in the local garage.

There is a potential conflict – once we have established that the resident has not left their job in the garage we should refuse to assist with completing the application as to provide any assistance to the resident in falsely completing a claim form we would be assisting the user to make a fraudulent claim which could lead to a criminal prosecution under the Fraud Act for the resident and have similar implications for KAWA and the adviser.

- (d) A user wants advice about taking legal action against the local electricity company. The company funds our service.

This is not a conflict of interest, as we would ensure the terms of the funding do not compromise independence. However, this resident may require reassurance of this fact. This can also apply if Management Committee members are landlords or represent Housing Associations.

7. Awareness

7.1 All members of the Management Committee, staff and volunteers will be made aware of this policy through their induction, training and supervision to ensure the policy is enacted at all times.

Getting further help

Network contacts

Management Helpline DIAL UK St Catherine's Hospital Tickhill Road, Balby Doncaster DN4 8QN 01302 310123	James Kenrick Youth Access 1a Taylors Yard Alderbrook Road London SW12 8AD 020 8772 9900
John Mulligan Federation of Information and Advice Services 4 Deans Court St Paul's Churchyard London EC4V 5AA 020 7489 1800	National Association of Citizens Advice Bureaux Myddelton House 115-123 Pentonville Road London N1 9LZ Bureau Management Consultancy Line 0845 120 2035 CLS Consultancy Line 020 7833 7046/7134
Law Centres Federation 18-19 Warren Street London W1P 5DB 020 7387 8570	Tricia Euston Shelter 3 rd Floor, Ludgate Chambers Ludgate Hill Leeds LS2 7HZ 0113 2455030
JJ Costello Shelter Cymru 25 Walter Road Swansea SA1 5NN 01792 469400	John Edwards Age Concern England 1268 London Road London SW16 4ER 020 8765 7468

Legal Services Commission contacts

You can also contact your regional LSC office. If you aren't sure which area you are in, any regional office should be able to direct you to the one for your area. For queries about the Quality Mark **only**, you can email the LSC at sdg.issues@legalservices.gov.uk.

London Regional Office 29/37 Red Lion Street London WC1R 4PP 020 7759 1500	North Western Regional Office 2nd Floor, Elisabeth House 16 St Peter Square Manchester M2 3DA 0161 244 5000
South Eastern Regional Office 3rd/4th Floor Invicta House Trafalgar House Brighton BN1 4FR 01273 878800	North Eastern Regional Office Eagle Star House Fenkle Street Newcastle NE1 5RU 0191 244 5800
Southern Regional Office 80 King's Road Reading RG1 4LT 0118 955 8600	Yorkshire & Humberside Regional Office City House New Station Road Leeds LS1 4JS 0113 390 7300
South Western Regional Office 33/35 Queens Square Bristol BS1 4LU 0117 302 3000	East Midlands Regional Office Fothergill House 16 King Street Nottingham NG1 2AS 0115 908 4200
Wales Regional Office Marland House Central Square Cardiff CF1 1PF 029 2064 7100	Eastern Regional Office 62-68 Hills Road Cambridge CB2 1LA 01223 417800
West Midlands Regional Office City Centre Podium 5 Hill Street Birmingham B5 4UD 0121 665 4700	Merseyside Regional Office Cavern Walks 8 Mathew Street Liverpool L2 6RE 0151 242 5200

Project Manager: Jim Fearnley
Project Adviser: Kem Herbert



Advice Services Alliance
4 Deans Court
St Paul's Churchyard
London EC4V 5AA

www.asauk.org.uk
Fax: 020 7248 3367

Telephone and email consultancy

Consultancy line: 0870 7700 447

Email: cls.support@asauk.org.uk

The line will be open at the following times:

Monday	3 pm – 5 pm
Tuesday	10 am – 12 pm
Wednesday	10 am – 12 pm
Thursday	10 am – 12 pm

Consultancy will be provided to individual agencies on issues relating to Quality Mark and Community Legal Service Partnerships. We will be able to advise agencies that have applied, or are considering applying for the Quality Mark, with the focus being on issues relating to the General Help level and above. We will also be able to advise on CLS General Civil Contracts. Our intention is to tailor our support as closely as possible to the nature and requirements of individual agencies.

The consultancy line is staffed by the project advisers, who will answer enquiries at first contact wherever possible. Where further research needs to be carried out in order to answer an enquiry, callers will be informed when they are likely to receive a reply and will be contacted at that time for an update if a full response is still not possible. The project advisers will aim to send any further written information to enquirers within five working days.

Training and Seminars

CLS Support provides training and seminars on both Quality Mark and contracting issues. For further information, including details of costs, please either contact us on the consultancy line or log on to our website.

Briefings

Our current programme of briefings is listed on the following page. Quality Mark briefings will deal with requirements at all Quality Mark levels to which the briefing topic relates. The order of priority of briefings is subject to consultation with subscribers – please complete and return the attached briefings feedback form to give us your views.

The LSC has agreed to subsidise the cost of briefings initially. Currently therefore, briefings will be free to Not-for-Profit organisations who are members of the major advice networks, while private solicitors, non-networked organisations and local authorities will be required to pay a subscription fee.

Email and Internet

You can also send your enquiries by email. A project adviser will respond to you within five working days. We request that you include a contact telephone number with your enquiry so we can call you back to obtain further information if necessary.

The ASA website includes a What's New page with Quality Mark and contracting updates, access to electronic versions of a limited number of our briefings, and details of our current training courses.

Briefings

Series 1: The Quality Mark

1	Introduction to the Quality Mark
2	Client Feedback
3	Independent File Review
4	Conflict of Interest
	<i>Signposting and referral</i>
	<i>The service strategy/business plan</i>
	<i>Sample procedures at General Help level</i>
	<i>Comments, Compliments and Complaints</i>
	<i>File Management</i>
	<i>Case Management</i>
	<i>Services of Others</i>
	<i>Information Provision</i>

Series 2: The General Civil Contract

1	Separate matters and Work that can count against contracts
2	Contract reporting arrangements – SPAN
3	Changes to Eligibility
	<i>Disbursements</i>
	<i>LSC Funding and VAT</i>
	<i>The Contract</i>
	<i>Employing a solicitor for the first time</i>

Series 3: Community Legal Service Partnerships

	<i>Introduction to Community Legal Service Partnerships</i>
--	---

Please note that the titles in italics are not yet published. Both the running order and the titles themselves are subject to alteration. We aim to respond to the changing priorities and needs of our readers as identified from any feedback received. We will also take into account any new developments in the Quality Mark.

Franchising Support Project Briefings

A limited number of the following briefings published by the Franchising Support Project are still available. When current stocks run out, they will not be reprinted, as they will be superseded by the CLS Support briefings listed above.

Not for Profit Sector Briefings – all of these are correct as at date published

- No. 7 The Contract Rules**
- No. 9 General Civil Contract: the Framework – The Access to Justice Act 1999
- No. 10 Funding Code and Other Levels of Service

New Agency (Phase Two Pilot) Briefings – although out of date these still contain relevant points

- No. 22 Designating contract work and time recording**
- No. 24 The Contract**
- No. 26 Survey Findings: the transition to block contracting and BriefCase

** These briefings are only applicable to agencies that have, or are applying for, the Specialist Help Quality Mark*

*** These briefings are only applicable to agencies who have, or are applying for, a CLS fund contract*

BRIEFING FEEDBACK SHEET
CLS Support Project Quality Mark Briefing No. 4



Please let us have your views on this briefing and whether there are other aspects of the Quality Mark , General Civil Contracts or the Community Legal Service on which you would like more briefings. Feedback from your organisation will help us make future briefings as relevant and easy to follow as possible.

Did you find this briefing helpful?.....
.....
.....
.....
.....

Do you have suggestions for any changes that might have made it more useful to you?
If yes, please specify:

.....
.....
.....
.....

Were there issues that you expected to be covered in this briefing and about which you want to know more? If yes, please say what these are:

.....
.....
.....

Are there other aspects of the Quality Mark, General Civil Contracts or the Community Legal Service on which future briefings would be useful?
If yes, please list below in order of importance:

.....
.....
.....

Your name:..... Tel:

Email:.....

Name/address of your agency:

Please return to: Advice Services Alliance, CLS Support Project, 4 Deans Court, St Paul's Churchyard, London EC4V 5AA or email cls.support@asauk.org.uk subject line " Quality Mark Briefing No. 4 Feedback"