Guide to

Effective supervision in legal practice

Practice support

Queensland Law Society
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1. Why supervision is important

Introduction

It is not rare for large or medium sized practices to have one or more partners that instinctively do not like delegating work. Common comments from such partners might include:

“I can’t trust anyone else to do the work”

“By the time I’ve explained everything, corrected their mistakes and everything, It’s quicker to do it myself”

These comments betray a misunderstanding of the important role that supervision plays in the success and profitability of a practice. Contrary to the assumptions of some partners, supervision is not just a ‘soft’ discipline; it is a major driver of profitability. If any given partner does not delegate and supervise effectively, he is not fulfilling the partner’s role of developing associates, maximizing revenue, helping to improve fee recovery and motivating the other fee-earners. As such, he risks becoming a brake on the profitability and potential future success of the practice.

All principals and other supervisors should develop an understanding of why supervision is important, understand the issues involved, and develop the skills required to ensure that their own supervision arrangements make a positive contribution to the practice.

Because of the culture of the billable hour in ambitious law firms, supervision considerations often come second to the billable hour and the fee-earning targets of each individual partner. Although partners cannot neglect their fee-earning duties, the neglect of their supervision duties can be equally questionable. Partners need to take responsibility not just for their own fee-earning, but for the fee-earning activities of their team.

For these reasons, supervision has to be not only effective, but also efficient: lawyers have to competently and effectively fulfill all their supervision duties, but have to do this with minimal personal time costs so they can still fulfill their own fee-earning potential.

This is where supervision skills come in. Too often, solicitors are not given training, advice or guidance on supervision, and therefore do not develop the necessary skills for when they become partners. As a result, they lack confidence, and supervise ineffectively and inefficiently with costs to both their own fee-earning potential, and the fee-earning potential of their team.

What needs to be supervised and why?

Supervision is important for a number of reasons. The sections below summarise the broad importance and scope of supervision, and also explain why supervision can be seen as a driver of profitability rather than – as many see it - a burden and a drain on potential fee-earning.

- technical skills and fee-earner development
- delegation and gearing
- billable hours and productivity
- fee recovery
- risk management
- ethics and professional standards
- client service and satisfaction, business development and knowledge management
- fee-earner retention, morale and wellbeing
Technical skills and fee-earner development

An important part of supervision is the process of passing on and transferring the supervisor’s skills, expertise and experience. Employees need the skills to do any specific task, but also have to keep developing, and the more supervision meetings or processes can focus on learning and development, as well as the specifics of any matter, the faster the development of the fee-earner.

The speed of development of fee-earners is important. If you can effectively develop a fee-earner, through developmental supervision, so that after two years they have reached the same level of expertise as a normal four year PAE fee-earner, that means that fee-earner can do more demanding work, or do work better or quicker, and thus generate more fees for you, whilst still costing only the going rate for a two year qualified fee-earner.

Investment in such developmental supervision needn’t involve additional time costs. It just involves developing your personal supervision skills, so the time you do spend on supervision activities is more efficient as well as more effective.

Delegation and gearing

Many solicitors are reluctant to delegate, believing that they either have a duty to attend to every client matter personally, or that they are the only ones with the ability to complete the task to their satisfaction. Alternatively, they dislike supervision, lack confidence in their supervision skills, or simply see it as simpler and easier to do the work themselves than to instruct and manage others.

Efficiency, profitability and value recognition from clients, however, are all promoted by having work done at the lowest compensated level of competent performance. To thrive in a partnership, sole practice or incorporated legal practice, principals should aim to generate profit through delegation and supervision in addition to their own fee-earning.

Data suggests that the most profitable practices are those with higher gearing (more fee earners per principal), thus demonstrating how efficient, effective supervision can actually be a driver of, rather than a drain on, profitability.

Billable hours and productivity

Effective practice management involves monitoring and managing the productivity of all fee-earners. Daily, weekly or annual billable hour targets are commonplace, but effective supervision of productivity involves more than just setting targets.

Supervisors should not only monitor, but should actively manage workloads to ensure fee-earners have enough work to meet their targets but are not overburdened. Training and support should be provided on both time recording and time management, and supervisors should offer supportive assistance to fee-earners where productivity is a concern.

A common problem, however, is not that principals fail to focus on productivity, but that they place too much reliance on it compared to other performance measures – it can be highly demoralizing for fee-earners to be appraised solely on their billable hours. Supervisors should aim to adopt a ‘balanced scorecard’ approach where productivity and billable hours are only one measure of a fee-earner’s performance.
Fee recovery

‘Fee-recovery’ is a term used to define the percentage of recorded time (or work-in-progress (WIP) that is ultimately recovered from the client through fees. The market average for this key indicator is in the region of 80-85%, leaving plenty of room for improvement.

- recovery rates can be affected by a number of things which can all be influenced by effective supervision.
  - poor time recording, leading WIP being written off or discounts
  - poor costs communication, leading to client dissatisfaction or billing disputes
  - mistakes or oversights, leading to WIP being written off, or work having to be done again
  - inefficiencies, leading to client dissatisfaction or billing disputes

Supervisors therefore need to supervise time recording, costs communication, risk management and general efficiency to ensure fee recovery rates remain high.

Risk management

Are you confident about a fee-earners ability to competently handle work without making mistakes? The more comprehensive and effective your risk management and knowledge management arrangements, the greater confidence you can have in entrusting your fee-earners with increasingly demanding tasks, thus expanding their competence and knowledge base.

Lexon Insurance identifies poor supervision as a major driver of claims.

The common lament among practitioners who are the subject of claims is “if only I’d known”. Practitioners need to implement arrangements to ensure they know what is happening within their practice- including all files and all people. In addition to common arrangements like file audits, supervision meetings, complaints handling systems and other risk management processes, supervisors also have to ensure they maintain a supportive culture so that fee-earners feel confident in approaching them about challenges, concerns or mistakes.

Supervisors need to be aware of and understand common risks – often concerning client communication and administration rather than substantive legal competence – and ensure they adopt supervision practices to limit the likelihood or impact of different types of mistakes or oversights.

In addition to mitigating claims, the right arrangements can help to reduce complaints and client dissatisfaction, and also increase profitability through limiting the mistakes that lead to time being written off.

Ethics and professional standards

As discussed in the next chapter, principals can be held responsible for the ethical conduct of not only themselves, but also all of their team.

Client service and satisfaction, business development, knowledge management

If the only things you supervise are technical skills and billable hours, there is a good chance that is all you will get from your team. If other behaviours such as keeping clients happy, finding new clients and transferring expertise and experience are important to your practice, these have to be supervised as well.
Fee-earner retention

Good supervision is a key motivator for fee-earners and can have a significant impact on fee-earner retention. Research suggests that the total costs of fee-earner resignations can be 2.5-3 times the annual salary of the lost fee-earner. This takes into account the following costs:

- loss of short to medium term revenue and profit
- loss of some clients
- retained overheads
- recruitment costs
- lost investment in departing fee-earner / cost of developing replacement fee-earner
- initial lower productivity / profitability of replacement fee-earner, and
- possible effect on other fee-earners

Using supervision to increase fee-earner retention can therefore have a big impact on profitability.

Morale and wellbeing

In addition to fee-earner retention, poor or inappropriate supervision can also contribute to low morale, anxiety, stress and depression, which in turn can contribute to:

- employee claims regarding workplace-related psychological injury
- negligence claims (Lexon insurance have identified ‘human factors’ as a major claims driver)
- poor client service
- low productivity
- absenteeism
- public/client reputation, and
- vicious circle of poor internal support and communication

Supervision

Even the supervisors need supervising. If you lead a large team, department or practice, you need to ensure that all supervisors are effectively supervising their reports in relation to the full range of issues discussed above.
2. Professional standards and supervision

The Legal Profession Act 2007

Section 53(2)(b) of the LPA provides that a regulatory authority may impose a condition on a practising certificate limiting the holder to “supervised legal practice”. Section 56 goes on to provide that “[i]t is a condition of a local practising certificate for a solicitor that the certificate holder must engage in supervised legal practice” only until certain conditions and time limits have elapsed.

“Supervised legal practice” is defined in Schedule 2 of the LPA to mean:

“… legal practice by a person who is an Australian legal practitioner –

(a) as an employee of a law practice if –

(i) at least 1 partner, legal practitioner director or other employee of the law practice is an Australian legal practitioner who holds an unrestricted practising certificate; and

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or

(b) as a partner in a law firm if –

(i) at least 1 other partner is an Australian legal practitioner who holds an unrestricted practising certificate; and

(ii) the person engages in legal practice under the supervision of an Australian legal practitioner mentioned in subparagraph (i); or

(c) in a capacity approved under the administration rules.”

The periods of supervised legal practice are set out in section 8 of the Legal Profession Regulation 2007.

The Society is empowered to make rules relating to the legal profession under Chapter 3, Part 3.2, Division 5 of the LPA. These rules can relate to supervised legal practice and unsupervised legal practice and are binding on Australian legal practitioners. The Queensland Law Society Administration Rule 2005 Rule 23(1A) provides that “supervised legal practice” includes practice by an Australian Legal Practitioner as:

(a) an employee of, or other person working under supervision in, a body corporate

(b) a government legal officer as set out in section 12 of the Act, or

(c) an employee of any person who is not an Australian legal practitioner, where the person engages in legal practice under the supervision of a person who:

(i) holds an unrestricted practising certificate, or

(ii) holds, or is eligible to hold, an Australian practising certificate, and that person has completed the period of supervised legal practice set out in subsections 56(1) (a) or (b) of the Act, or the equivalent provision of a corresponding law.
General principles

The duty on partners to supervise their staff goes beyond direct supervision but includes having appropriate systems and procedures in place which prevent, detect and correct misconduct by employees. For example, a partner may be responsible for an employee solicitor who conducts a matter without diligence and competence as a result of unreasonable workloads imposed by the practice. A practitioner’s ethical duty of supervision is clearly explained in Rileys on Solicitors as follows:

[2085] proper supervision

[2085.5] Duty to supervise

A lawyer should properly supervise all legal work carried out for, and on, his or her behalf. Proper supervision serves to reduce the risk of breaches of duty to clients by other lawyers or staff under the lawyer’s control, and so reduces the risk of the lawyer being exposed to legal and professional liability, whether directly or vicariously. It is appropriate, for this purpose, to set in place procedures and systems that all employees of a law practice must follow in processing work, and regularly monitor compliance at various trigger points, as well as review those procedures and systems.

The courts have made it clear that delivering a client into the care of an employee does not reduce a lawyer’s duties, whether or not the employee is legally qualified. A principal should not, therefore, assign work to an employee beyond the latter’s capability, and must supervise any work so assigned. The appropriate level of supervision will vary according to the employee’s qualifications and experience, the type of work in question, and the extent of control the employee enjoys. A useful risk management tool when delegating is to always delegate in writing, set timelines, and fix points of contact with the delegate, as well as providing a clear background for the delegation.

The risks are heightened where a lawyer proposes to ‘outsource’ work, in which case not only may there be difficulties in exercising proper supervision, fully informed client consent to the outsourcing must be secured.

(a) Dictionary definition

There has been no judicial consideration of what constitutes “supervised legal practice” to date.

“Supervise” is defined in The Concise Oxford Dictionary to mean:
“oversee, superintend execution or performance of (thing) or actions or work of (person)”. Supervisor is defined to mean:
“person who supervises; “administrative or advisory official in town, school, etc”.

(b) Queensland

Rule 37 of the Legal Profession (Solicitors) Rule 2007 provides that “[a] principal is responsible for exercising reasonable supervision over solicitors and all other employees in their provision of legal services by the law practice”. “Reasonable supervision” is not further defined.

The College of Law publishes Rules for the Work Experience Component and details about the work experience component of courses. The Role of the Work Experience Supervisor is stated to be to “aid the student’s learning by providing opportunities for students to” perform a number of tasks and experiences. It states that the role “… extends beyond supervision to include coaching, counseling, monitoring, delegating and appraisal”.

It goes on to provide that “a supervisor should:

- provide opportunities to observe and review the exercise of professional skills by experienced practitioners
- give feedback and guidance on work
- provide any necessary support, and
- give opportunities to discuss problems”

Suggestions for supervisors include answering questions, encouraging questions, providing regular guidance and feedback on performance, praising achievements and discussing improvements, assigning tasks and giving instructions. Whilst this does not provide any real guidance as to the level of supervision, it does indicate that supervisors should at least be aware of work that is being undertaken and that work should be checked on a regular basis.

In *Legal Services Commissioner v. Baker*, Moynihan J. examined the obligation to supervise, although not in the context of the legislation currently under consideration. His Honour stated:

“A practitioner should properly supervise all legal professional work carried out on their behalf. Vicarious liability aside, a practitioner’s legal and fiduciary duties to a client are not avoided or reduced by delivering that client into the care of an employee, whether or not that employee is legally qualified. The supervision required however varies according to the employee’s experience, qualifications and role and with the type and complexity of the work”.

Relevantly, in that case, the Tribunal was examining the level of supervision in relation to a particular letter that was sent by a junior employee. The evidence suggested that, in relation to one of the firm’s branch offices, a senior solicitor would be assigned to some extent to monitor files conducted by more junior practitioners. The senior solicitor had no instruction as to the supervision that was to occur nor in relation to how to deal with any issues that might arise. Moynihan J. stated that reviews were undertaken with the firm’s interest at the forefront rather than in the interests of the client. His Honour considered that “[g]iven the considerations canvassed it was irresponsible for the practitioner to permit the letter to be sent without satisfying himself if [it] was accurate and well founded”.

The decision of the Legal Practice Committee in *Legal Services Commissioner v. Duffield* would also seem to indicate that principals should ensure that they are aware of all matters essential to the conduct of a file and that they should also ensure that advice given and correspondence sent is correct. Matters of a minor nature and not essential to the conduct of a file may not require such strict supervision.

**Branch offices**

**Rule 34 of the Legal Profession (Solicitors) Rule 2007 states** –

A practitioner must exercise effective control of each office maintained by the practitioner for the purpose of conducting the practitioner’s practice, and in particular, the practitioner must ensure that at each office:

34.1 the practitioner or a partner of the practitioner undertakes personally, or supervises adequately, the work done and the legal services provided;

34.2 all work undertaken and all communications received are given prompt attention; and

34.3 the qualifications and status of the persons engaged in the practitioner’s practice are represented accurately to any persons who have dealings with the practitioner’s practice.
As with supervision generally, the professional requirements in relation to the supervision of branch offices are largely non-prescriptive. There are no absolute requirements, for example, that a principal practising certificate holder, or even an employee solicitor be present for any period of time at a branch office. It is up to the individual practitioners and their practices to ensure that their supervision arrangements are sufficient to comply with the professional requirements. Law practices are required to advise the Society of their attendance/supervision arrangements.

Summary

There is no real definition of what constitutes “supervision” and minimal guidance as to the extent of supervision required to satisfy the “supervised legal practice” requirements in the LPA. An examination of the legislation, some case law and other jurisdictions has revealed the following matters which should be taken into consideration:

- the person must be supervised by someone with an unrestricted practising certificate with appropriate experience
- there must be daily contact between the supervisor and the supervised person
- the supervisor must be fully aware of the work being done
- the supervisor must have direction, oversight, the ability to give instructions and assign tasks and the ability to amend, override or intervene in relation to the matter and the tasks being undertaken
- the supervisor must give regular feedback and guidance to the person
- the supervisor should satisfy him or herself that correspondence and advice is accurate and well-founded, with advice being endorsed and signed off
- the supervisor should be fully aware of matters essential to the conduct of a file in relation to advice, documentation and correspondence, with minor matters and non-essential matters requiring less strict supervision

The level of supervision will vary depending on the experience, qualifications and the type and complexity of work being undertaken by the person.

3. Effective delegation

The content for this section is adapted from the reading materials from the Queensland Law Society Practice Management Course ‘Management’ Section, developed with University of Queensland Business School.

There are three concepts involved in the process of delegation:

- giving someone else the authority to do a piece of work (the authority concept)
- making that person responsible for how the job is done (the responsibility concept), and
- holding that person accountable for the results (the accountability concept)

In other words, delegation is the process of giving someone the authority and responsibility for carrying out a particular task. It also means holding that person accountable for the results.
**Why delegate**

Delegation is necessary for a number of reasons:

1. **To achieve the goals of the organisation.** No one person can do everything in the average firm. No one person will have all the skills or all the time necessary, so tasks have to be delegated if the enterprise is to achieve its objectives.

2. **To relieve the pressure of a heavy workload.** Many managers experience a heavy workload. Rather than suffer from excess stress (which can affect both the health of the individual and the organization), it is better to delegate. This may mean hiring more staff. For some managers it is a case of ‘delegate or die’.

3. **To pass on skills.** Delegation is a key way in which skills can be passed on in the organization. It is an important part of the training and development of fee-earners. If solicitors are to develop, they need to experience new assignments which extend their skills. Quicker skills development in turn makes them more valuable to the practice, increasing profit potential.

4. **To save time in the long run.** A manager, who delegates a new task to a subordinate and provides the necessary training, will eventually save time. Once trained in that area the subordinate can work without referring everything back to the partner. A little time spent in initial training will lead to significant time savings later on.

5. **To enrich jobs.** Managers can enrich the jobs of individuals in their team by giving them tasks that increase the variety of work they do or which provide more responsibility or more interesting work. Delegation is a way of making a person’s job more rewarding, more challenging. It is a mistake to delegate only the lousy jobs.

6. **To show confidence.** Delegation is a means of expressing trust in people, of showing that you have faith in their ability. Most people welcome this kind of trust.

7. **To encourage participation.** Delegation is also a way of involving people more in “what’s going on” in the organization. This increased involvement can increase a person’s motivation and job satisfaction.

8. **To make people promotable.** By delegating tasks, a manager is introducing employees to greater experience and responsibility. Such experience makes people more promotable. It also makes the manager more promotable, because someone is being trained to step into their shoes and therefore the manager’s own promotion is possible.

9. **To match the cost of production with client’s valuation of the service.** Many legal tasks simply cannot sustain the cost structure of senior solicitors. For those tasks to go undelegated, there can only ever be two results: an unhappy client who does not perceive value for the service, and/or a wasteful use of legal resources that could have been better deployed elsewhere. When tasks are delegated effectively to well-trained, well-supervised, cost-effective people, the outcome can be highly profitable.

In spite of the numerous good reasons for delegating work, many partners keep too much work for themselves and struggle to delegate. The table below details some common objectives to delegation, and how to overcome them.

<table>
<thead>
<tr>
<th>Objection</th>
<th>Actions which can overcome objection</th>
</tr>
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</table>
| Client only wants to deal with a partner | • Explain cost benefit of dealing with other people  
• Confirm close supervision so partner still “on the job”  
• Arrange joint client meetings with solicitor handling file |
| Ego – belief that no one else is as good | • Improve internal training  
• Introduce effective delegation as one of partner performance criteria  
• Reward team rather than own performance |
Fear of poor quality work
• Improve staff employment process
• Improve file management procedures to ensure quality instructions

Loss of control of file
• Introduce regular formal file reviews
• Arrange joint client meetings with solicitor handling file
• Implement effective bring-up systems

Personal relationship with client is diluted
• Arrange joint client meetings with solicitor handling file

Fear of becoming redundant
• Learn new skills

Impediment to meeting fee budget
• Introduce effective delegation as one of partner performance criteria
• Reward team rather than own performance

Takes longer to explain than to do task myself
• ATTITUDE – delegation must be embraced as a firm file management strategy


Delegation and gearing

Delegation of work is a critical component in elevating the return on investment to partners beyond the simple return they earn on their own labour. This is referred to as firm “leverage” and is calculated as the ratio of fee-earners per principal. Operational gearing actually can be achieved through people and/or technology, but for our purposes here, we will only consider gearing through people. Profit per person, hours worked, number of persons, and number of matters combine to form the key elements of profit per year.

More matters demand more producers. More producers can produce more charged hours. More charged hours produce more profit. The challenge is to have an adequate supply of producers qualified and trained to an appropriate level for the kind of work involved. However, this is no simple matter.

Guidelines for effective delegation

When delegating, a few guidelines are worth bearing in mind:

1. Authority and responsibility go hand in hand. This is the principle of correspondence of authority and responsibility as emphasized by the classical writers on management. Those with certain responsibility must have, and be seen to have, the necessary authority – otherwise, how can they get the job done properly? It is very frustrating to be given responsibility without authority.

2. Delegated tasks need to be clearly defined. In delegating, define the task clearly. Spell out the specific responsibility and the authority and accountability that go with it. Give clear instructions.

3. Rewards need to be provided. Extra responsibility should make a person’s job more interesting and lead to such rewards as greater recognition, more pay, and increased chances for promotion.

4. Training, guidance and follow-up are always needed. Managers who choose to delegate must provide adequate training and guidance. People should not be “dropped into it” without genuine support. Managers also need to follow up in a way that shows interest in how the job is going, and that makes sure deadlines are met without making the employee feel uncomfortable.
5. **Do not only delegate the lousy jobs.** It is unwise to always delegate the boring or unpleasant tasks. This can demotivate employees. It pays to delegate tasks in a way that enriches jobs.

6. **Those who delegate still retain ultimate responsibility.** While you may have delegated a particular task, you cannot “wash your hands” of the whole thing. Those who delegate are still responsible for the wisdom of their delegation. In the same way, project leaders who delegate sections of the work are still responsible for the ultimate completion of the whole project. Departmental managers delegate every day, but are still responsible for the running of the whole department. Delegate but do not abdicate!

7. **Select people carefully.** Skilful managers know their staff. They should know who can handle a particular assignment and who cannot. They know who is looking for more challenging work, looking for an opportunity to advance, and who is not. In other words, managers need an understanding of each person’s abilities and aspirations. Delegation can be used as a way of coaching those who are seeking to “grow” in their job.

8. **Keep communicating.** It is easy to believe in communication – it is another thing to practice it. Effective delegation depends on good communication – clear and full instructions, plenty of scope for feedback, and patient listening. Throughout the whole process of delegation, it pays to keep communicating both formally and informally.

**Discuss how and why – don’t just say ‘what’**

To facilitate the above requirements, supervisors therefore have to concentrate on increasing understanding through explaining and discussing issues, rather than just telling the fee-earner what needs to be done:

- Not: “Do it because I say so”
- But: “This is **what we believe is important**”
- “**How** can we best achieve the client’s objective?”
- “This is **why** we do it this way”
- “**What do you** think?”

Situating work into the bigger picture, in terms of client objectives, practice objectives, or the work authors’ development, can often provide the trigger to motivate and improve performance – and it needn’t take long. Alternatively, many supervision meetings concentrate on technical topics that are time consuming and might be better dealt with elsewhere, on a specific training course for example.

Supervisors should be aware of the time they spend on different approaches (technical / motivational) and invest time in supervision approaches that have the biggest return. Increasingly this means focusing on high level understanding and motivation rather than time consuming technical discussions.
4. Common supervision failings

Solicitors face a number of challenges in relation to effective supervision, mostly relating to the culture of legal practice or the focus of solicitors’ education.

<table>
<thead>
<tr>
<th>Time pressures</th>
<th>With fee-earning, client communication, marketing and other management pressures, many partners or principals struggle to find the time to supervise effectively.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Practice culture</td>
<td>Many practices suffer from a culture that is demanding, but not supportive or is critical and blame fixing rather than problem solving.</td>
</tr>
<tr>
<td>Lack of training</td>
<td>Solicitor supervisors are rarely provided with – and rarely acknowledge the need for - the comprehensive training necessary for their demanding role.</td>
</tr>
<tr>
<td>Failure to appreciate full importance of supervision</td>
<td>Solicitor supervisors often fail to appreciate the full importance of supervision in terms of risk management, productivity, profitability, staff retention, morale, client service, ethics and more.</td>
</tr>
<tr>
<td>Complacency</td>
<td>Solicitors who have proved their intelligence and competence in legal practice sometimes underestimate the challenges that come with supervising a team, and subsequently fail to invest in developing the necessary skills or implementing the necessary systems.</td>
</tr>
<tr>
<td>Transfer of bad habits</td>
<td>Junior solicitors can learn poor supervision habits from their own supervisors and then pass these on themselves.</td>
</tr>
</tbody>
</table>

These and other factors contribute to the following common supervision failings:

- failure to supervise
- poor reactive supervision
- poor proactive supervision
- failure to identify key risks and issues
- failure to adequately address risks and issues once identified
- failure to manage the person as well as the file
- develop the person
- support their wellbeing
- inflexibility
- waiting for the appraisal
- aversion to discussing supervision with team
- failure to invest time and effort in personal communication skills

Failure to supervise

The most common failing identified in complaints and professional indemnity claims is simple failure to supervise, with time-poor principals placing too much faith in, or demanding too much of, either their entire team or specific individuals within their team.

Often, problems occur with individuals who are more experienced and seemingly more competent and confident. Whilst principals will adequately supervise junior or less confident fee-earners, they have sufficient confidence in the abilities of others to largely self-supervise. The experience of claims and complaints suggests this is a mistake, with problems occurring where principals least expect them.
Appropriate supervision should be provided for all team members and be seen not as a criticism or judgment on a fee-earner’s abilities, but as a necessary business process. Principals should also remember that there is more to supervision than just risk management – and that supervision should be provided for all with this in mind.

**Poor reactive supervision**

Because of the fee-earning duties, supervisors can often be less than totally supportive when team members ask for help, often being seen as intimidating or dismissive, and failing to provide the assistance sought.

Reactive supervision is discussed further in section 7.8.

**Poor proactive supervision**

As discussed above, reactive supervision can fail to identify risks and fails to assist those who are either unaware they need assistance or are unwilling to seek help. For this reason, supervisors should look to arrange and keep regular meetings with all reports.

Whilst most supervisors acknowledge the need for regular one-to-ones, the nature of legal practice (time pressures etc) means that it is often all too easy to skip or miss such meetings on a regular basis – either because the supervisor is busy or absent, the team member is busy or absent, or because it appears that ‘there is nothing particular to discuss’.

Whatever the reason, missing a supervision meeting will often mean that a supervisor remains unaware of the issues relating to a file, client or staff member, and will therefore not be able to intervene, support or assist. The only true test of whether issues need to be discussed is to discuss them.

Supervisors should therefore commit to not only scheduling but actually keeping personal supervision meetings with all their staff.

**Failure to focus on key risks and issues**

Supervision meetings risk being ineffective if they fail to identify and address areas of risk affecting either the progress of the matter, the client relationship or the ability of the fee-earner. Too often discussions are either too general in nature, or focus on areas – including substantive legal content – that are unlikely to identify issues of concern.

Supervisors should ensure that they are aware of the common risks relating to different matters, clients or staff, and conduct discussions accordingly. Most claims and complaints, for instance, arise from failures in communication, process and administration rather than a lack of knowledge of the law. This means supervision should focus on these areas and, where possible the supervisor should look to review files to check progress rather than simply ask for an update.

**Failure to adequately address risks and issues once identified**

Once a concern or oversight with a matter has been identified, the initial concern is to put things right – make an amendment, re-do the work, or attempt to limit any possible damage arising.

Whilst this is important, many supervisors make the error of treating each mistake or performance issue as an isolated incident rather than seeking to understand and address any underlying causes or drivers, and addressing these as well as the specific instance.
In the terminology of quality management, this means the difference between:

- **corrections** - sort out the file, and/or the person, address omissions, apology and redress offered etc; and
- **corrective actions** - adopting a systemic approach and changing admin or management arrangements across the practice to ensure similar breaches do not occur

The philosophy is that if a mistake occurred for one person, on one file, it can occur for any person on any file unless underlying systems are addressed. This might mean arranging further training (for everyone), or updating checklists or processes. Mistakes occur in all teams, but it would be a poor supervisor who doesn’t learn from these and make every effort to ensure the same mistake doesn’t occur again.

**Failure to manage the person as well as the file**

Supervision involves managing people as well as files – from both a risk management perspective and in relation to broader issues.

Both Lexon Insurance and the Queensland Legal Services Commission have found that ‘people issues’ (stress, anxiety or other concerns) are causes of both claims and complaints. Supervisors should therefore seek to be able to recognize any signs of personal distress, and manage them appropriately. LawCare, Queensland Law Society’s Employee Assistance Program, has produced a ‘Leader Guide’ to assist supervisors with these tasks, and this is attached in Appendix 1 to this guide.

Whilst the majority of stressors are personal – arising from family concerns etc. – supervisors also have a role in limiting the potential of the workplace to cause stress, anxiety or depression. This means being aware of typical workplace stressors such as workload or workplace conflict and limiting the potential of these to cause problems by, for instance, actively, managing workloads, and addressing conflict issues early and effectively. The role of supervision in relation to the morale and wellbeing of team members is discussed further in chapter 6.

In addition to personal wellbeing, supervisors also have a responsibility to develop the skills, competencies and careers of their team. Whilst other areas of this guide look at a number of ways to do this, one failing of many solicitors in relation to any problems or challenges fee earners have is to ‘take over’ and assume responsibility for a matter or client relationship as soon as things get a bit tricky.

This might seem the best approach in the short term, but misses the opportunity to develop fee-earner skills in important areas. Wherever possible, therefore, supervisors should avoid the temptation to take over, but instead support the fee-earner in tackling such difficult challenges so skills are developed and experience gained.

**Inflexibility**

Many supervisors quickly develop a personal supervision style – supportive or demanding, reactive or proactive, boss/ mentor/colleague/friend, or either micro-managing or allowing for significant fee-earner autonomy. All of the above approaches can be flexible at different times and with different people, but will also risk being largely ineffective much of the time.

For this reason, supervisors need to avoid over-relying on a personal style, and instead develop a flexible approach in response to the needs of different people and different situations. This is discussed more in chapter 5.
Waiting for the appraisal

Effective supervision requires that risks and performance issues are both identified and addressed as early as possible. Positive feedback should also be given at the appropriate time to avoid risking any feelings of resentment about lack of recognition.

Both supervisors and team members, however, often fail to address issues early, either because of time pressures, a fear of criticism, a desire to avoid potential conflict, or a lack of skills or confidence.

Whatever the reason, the vast majority of issues are better tackled early, and supervisors have to ensure that they not only are personally proactive in addressing risks and performance issues early, but that they create a culture in which team members are confident in seeking support early.

Leaving discussion of issues until a six-monthly appraisal, or even a monthly supervision meeting risks poor habits becoming seen as acceptable or spreading to others, or problems escalating to claims or complaints. Appraisals are not the place to introduce new concerns; they should merely clarify or discuss further development. Feedback and supervision need to be constant and ongoing.

Aversion to discussing supervision with team

As with the seeking of client feedback, many solicitors have an aversion to seeking feedback on their own performance from colleagues. Team members are, however, the key source of information for solicitors seeking to improve their supervision skills and arrangements.

Supervisors should seek feedback from their team at regular intervals, and where possible, this should be de-personalised or confidential. This will identify areas for development and might also be a source of positive feedback providing additional confidence.

Failure to invest time and effort in the development of personal communication skills

Whilst some solicitors find supervision easier than others, supervision is not an easy art to master, involves more than common sense and natural intelligence, and requires the development of an entirely different skill set.

Solicitors should not expect to acquire skills and become effective supervisors without the investment of some time and effort – including where possible, tailored supervision training.
5. The supervision toolkit

There are three key elements to effective supervision: skills, systems and approach.

All of these need to be developed through practice, experience and the building of confidence. With the addition of feedback from both staff and others, practices and individuals should be able to continuously improve their supervision arrangements.

Effective supervision is not reliant on any single factor, but is instead dependent on the combination of all of the areas above.

- Many practices will have good supervision systems but the quality of supervision will be inconsistent because individual supervisors lack specific skills.
- Individual supervisors might have well developed personal supervision skills, but their ability to supervise effectively will be hampered if a practice lacks performance management systems, regular file audits etc.
- Individual supervisors might both possess skills and have practice systems to utilise, but if they are inflexible in their approach, do not react to the needs of their team and do not seek feedback on their supervision abilities, they are unlikely to deliver effective supervision.

The next chapters will look at the different constituents of the Supervision toolbox in more detail.

6. Approach

Even with well-developed supervision skills, and appropriate supervision arrangements within a practice, much will still depend on the attitudes and approaches of individual supervisors.

The most effective supervisors are those that:

- recognize the full broad importance of both delegation and supervision
- invest ample time in their supervision duties, and
- have confidence in their supervision abilities
Many supervisors, however, either:

• struggle to recognize the full importance of effective supervision (see chapter 1)
• have a personal instinctive aversion to supervision duties, possibly because they lack confidence in their supervision abilities, or
• consistently prioritise fee-earning or client-related activities because these either seem more urgent, or because these are more personally rewarding

It is not surprising that many partners or principals struggle to make a full commitment to their supervision duties. Their career to date has primarily been focused on their personal fee-earning and it often takes time and no small effort to adapt to and develop skills in many other areas, including not just supervision but also marketing, business planning and more.

If a change in attitude is required, this will often come from gaining experience and confidence, so the first step should be to allocate sufficient time to gain such experience and confidence.

Once they do this, supervisors are often surprised at how an investment in supervision time can lead to an increase in practice profitability – with improvements in fee-earner productivity, efficiency and other advantages more than offsetting any loss of fee-earning capability of the supervisor themselves. Increasingly, supervisors in legal practices are recognizing this effect and devoting more and more time to supervision duties, taking on more staff and cutting back on their own fee-earning.

Unless supervisors make a commitment by:

• allocating set times in their diary for both proactive and reactive supervision, and
• reducing (or negotiating a reduction in) their personal fee-earning budgets

_Supervision will nearly always be seen as a distraction from fee-earning work, with the result that both fee-earning and the quality of supervision suffers._

**Flexibility and Responsiveness**

Another common feature of successful supervisors is flexibility.

Most supervisors will find they have a natural supervision style:

• autocratic or democratic
• instinctively micro-managing or allowing significant autonomy
• demanding or supportive

Each style is likely to be highly effective in supervising some people but not others. This is because different people will themselves:

• have different supervision needs (advice / motivation / trust) in different situations
• be at different stages of development (in need of skills? confidence? motivation?), and
• respond differently to different approaches (some respond to praise and support / some respond to challenge or criticism)

Part of the challenge of effective supervision is therefore to identify and understand the needs of different fee-earners in different situations and then to support and supervise them accordingly.

This focus on the importance of flexibility is a key theme in recent academic discussions on leadership, including theories of ‘Situational Leadership’ developed by Hersey and Blanchard (See [www.wikipedia.com – Situational Leadership](http://www.wikipedia.com)).
7. Key supervision systems

7.1 Risk Identification and monitoring

The common lament from supervisors whose practice becomes subject to a claim due to an oversight or mistake is “If only I’d known”.

Supervisors have to be vigilant in ensuring their personal awareness of all the potential risks within their practice. This means monitoring a range of indicators and concentrating attention and supervision time where it is most needed.

| Workload                          | • Excessive workload and being ‘too busy’ are key underlying causes of claims and complaints. Everyone has to put in extra hours occasionally, but if an excessive workload becomes the norm, it can affect both competence and wellbeing.  
|                                 | • How much is too much? Set an upper limit on the amount of work any individual can reasonably be expected to do each week/month.  
|                                 | • Regularly monitor the workloads of all the individuals in your team; and  
|                                 | • Be ready to offer support or reallocate work when necessary. |
| Wellbeing: performance or behavioural changes | • As a supervisor, you may have encountered employees with job performance issues and/or uncharacteristic behaviour. Whilst sometimes people will approach you directly to say they are experiencing difficulties, often it is through observing behaviour that concerns are identified.  
|                                 | • Read the Lawcare Leader Guide and familiarise yourself with the early-warning signs that can indicate an employee has a problem. |
| Client engagement risk assessments | • Use prompts or checklists to encourage all fee-earners to identify risks as part of the client engagement process.  
|                                 | • Ensure you are made personally aware of any matters with significant or heightened risk, so that you can offer additional support as required. |
| Client feedback and complaints | • Seek regular client feedback to identify any issues or concerns specific to either an individual or area of activity, and ensure any areas of concern are appropriately supervised.  
|                                 | • Establish a formal complaints handling process to ensure all client concerns are formally recorded and brought to the attention of an appropriate supervisor. |
| File inactivity | • Either undertake manual checks or use your IT systems to identify any files that remain open but that have had no time recorded against them for a significant period of time (week / month??)  
|                                 | • Why has no time been recorded? Has the file been overlooked? Is the fee-earner experiencing difficulties? |
| Unbilled work-in-progress / unpaid bills | • Problem files can sometimes be identified by either a fee-earner’s reluctance to bill the client, or the client’s reluctance to pay the bill. Either could be a cause for concern. |
| Attitude to supervision | • Monitor each team-members attitude to supervision:  
|                                 | • If they are seeking excessive support, are they out of their depth? Is more training or other support required?  
|                                 | • File protectiveness is often a sign that a fee-earner is struggling. The more protective fee-earners become over their files, the more prudent it is for the supervisor to review them  
|                                 | • If they are evading supervision or are reluctant to seek help, are they concealing a problem and reluctant to admit they need help? Are they over-confident? |
Supervision as a business process, not a criticism

In addition to monitoring all of the above, supervisors also have to monitor their own complacency and how the assumptions they make about different staff can affect their approach to supervision.

Often, problems occur with individuals who are more experienced and seemingly more competent and confident. Whilst principals will adequately supervise junior or less confident fee-earners, they have sufficient confidence in the abilities of others to largely leave them to self-supervise. The experience of claims and complaints suggests this is a mistake, with problems occurring where principals least expect them. Often the simple fact of being held in high regard means people are less willing to admit to problems, meaning supervision is more important than ever.

Supervision should be seen as an important business discipline, not a comment or criticism on a person’s abilities. This means that everybody – including partners and team leaders – can benefit from supervision of their work.

7.2 Risk management

Risk management is one of the key objectives of supervision. Supervisors should seek to ensure, however, that personal interactions are not the only method by which risk is managed.

Instead, supervisors should introduce a number of systems and arrangements that seek to limit both the likelihood and impact of mistakes, omissions or oversights.

In addition to the other numerous advantages of risk management - reducing claims and complaints, lower insurance premiums, improved client retention; fewer write-offs etc - the implementation of effective risk management systems can help supervisors in two key ways:

• it enables them to confidently accept more work, and delegate more challenging work to their team, and
• it reduces the burden on personalised supervision by having other methods of managing risk

Whilst this guide does not seek to be a comprehensive guide to risk management arrangements, the table below identifies some of the key arrangements that supervisors should consider implementing.

| File audits               | • Regular peer-review of files against a checklist of key actions / requirements.  
|                          | • See section 6.2 |
| Workload monitoring, other central checks | • Monitoring fee-earner workload for either under-utilisation or excessive burden  
|                          | • Using your central practice management or accounting systems to check other indicators of performance or concern |
| Procedural supervision | • Checklists or IT prompts to ensure fee-earners follow due process, limiting the risk of oversights |
| Client engagement arrangements | • Analysis, communication and training re common risks relating to the acceptance of new matters and clients  
|                          | • A matter opening risk assessment process – ensuring the supervisor sees all risk assessments / file opening forms |
Key date management and delay

- File inactivity checks
- Processes for identifying, recording and alerting fee-earners to the need to action time sensitive tasks, including back-up diaries and primary and secondary ‘bring-up’ systems

Conflict of interests arrangements

- Recording all conflict-relevant client and matter data
- Undertaking conflict checks on all new instructions
- Decision-making processes to resolve conflicts once identified

Monitoring communications

- Checking of incoming and outgoing letters and emails

Further information and guidance on risk management arrangements is available from Lexon Insurance at [www.lexoninsurance.com.au](http://www.lexoninsurance.com.au) or 07 3007 1266.

7.3 Checklists and prompts

One of the key drivers of negligence claims identified by Lexon Insurance is ‘failing to manage the legal process (including communication errors)’. This refers to the situation where solicitors know the law, know what they have to do, and 99% of the time complete the process competently, but on rare occasion – perhaps because they are distracted or under pressure – fail to action or complete a key part of the process, and are oblivious to the fact they have made an omission.

Checklists can help.

Studies in a number of different industries demonstrate that providing checklists and requiring people to go through them and tick actions off as they are completed can dramatically improve performance in terms of mistakes or oversights.

It is good practice to prepare and use checklists for different areas of practice or different tasks and for these to be kept on file primarily to aid the fee-earner, but also to assist with supervision, with file audits, and in the event of someone taking over the file.

Lexon Insurance have provided a number of checklists and protocols to aid practices, including the following which are available from their website at [www.lexoninsurance.com.au](http://www.lexoninsurance.com.au):

- conveyancing protocol
- plaintiff PI procedure pack
- wills and EPA procedure pack
- business sale procedure pack
- binding financial agreements
7.4 File audits

One of the most common traits amongst practices that have either clean or very good records in relation to claims and complaints is that they undertake regular file audits.

There are two main types of file audits which might be used either separately or together depending on practice culture and the nature of work:

- A **qualitative review** focusing on the substantive legal aspects of any matter; and
- A **procedural review** checking that key tasks have been actioned competently

A **qualitative review** can be time consuming for supervisors but can still prove effective and profitable if it allows work to be done by more junior (cheaper) fee-earners and allows for the development of those fee-earners.

A **procedural review** is essentially a checklist exercise that can be used to identify omissions, oversights or concerns regarding:

- anti-money laundering
- client engagement processes
- client communication
- compliance with either regulatory, practice or client requirements
- costs communication
- ethics and quality of time-recording entries
- file and document management
- key dates and delay
- level of supervision
- scope, manner and quality of advice
- actual level of supervision
- undertakings
- WIP and billing

This type of procedural review can be much less time consuming for supervisors because files are commonly reviewed by peers or colleagues rather than by the supervisor. Depending on the objectives of the audit and the type of work, some file audits can even be done by support staff, which is a vital consideration for sole practitioners.

Peer file reviews also have other benefits in terms of exchange of best practice or development: in reviewing other people’s files, fee-earners might gain an insight into different areas, or might see better ways of managing files, matters or issues.

If a supervisor does implement a system of file reviews it is important that the files of all fee-earners are audited, to avoid possible resentments. One of the challenges of supervision is that it is very difficult to tell where the risks lie – and often they lie with those fee-earners who outwardly appear the most competent, confident and organized. File audit supervision shouldn’t be seen as a criticism or an indicator of concern merely an important process in the management of legal work.

Fee-earners can get very protective or defensive about their files, but those that do are probably those that most need to be audited. This includes partners, principals and supervisors, who are often some of the worst offenders when it comes to following due process.
The time burden involved in reviewing colleagues’ files can cause some resistance, so supervisors should take some effort in setting requirements for file audits in terms of:

- how extensive each audit should be
- how many files should be audited each week or month, and
- how files should be selected (perhaps a mix of random selection and either pre-identified high risk files or files that the fee-earner would appreciate being audited)

Frequency and depth should reflect the nature of the work and also the experience of the fee-earners, but once audit targets have been set, a supervisor should be disciplined in ensuring that:

- audits are actioned
- results recorded
- immediate concerns addressed, and
- that the supervisor then undertakes a regular analysis of the results to identify the need for system developments or training

Supervisors should look to develop different audit forms for different matters or practice areas, but for reference, a Lexon Insurance sample file audit is attached in Appendix 2.

### 7.5 Client engagement and work allocation

Who can accept work for the practice? Where fee-earners are authorised to accept and decline instructions – perhaps in high volume areas of practice – this should always be subject to discussion at regular supervision meetings.

Whilst a supervisor may or may not make the initial decision as to whether or not new instructions are accepted, supervisors should ensure that they are made aware of all new instructions, and that they subsequently confirm, as soon as possible after a file is opened, that:

- the client and matter should be accepted; and
- the matters should primarily be handled by the fee-earner identified

The above may be evidenced by the supervisor’s signature on the file or matter opening form.

In allocating new instructions, a supervisor should then consider the following:

- the current workload of possible fee-earners
- fee-earner experience and expertise of possible fee-earners
- client preferences and expectations regarding:
  - the seniority and experience of the fee-earner
  - the cost implications of different fee-earners
  - continuity from other client matters, and
  - the involvement of the supervisor

The decision to allocate work can often be tricky: should work be allocated to a more experienced fee-earner to ensure efficiency and competence, or should it be allocated to a more junior fee-earner to aid development? Wherever possible, supervisors should seek to maximize both client satisfaction and the development of junior fee-earners. Often this means either:

- a greater administrative challenge (juggling different allocations)
- a higher personal supervision burden, or
- allocating work to a team rather than an individual (which often brings an additional co-ordination burden)
**Opening risk assessments**
Whenever an instruction is accepted – either by a partner or other fee earner – a risk assessment should be undertaken to identify and assess:

- any client related risks
- any risks specific to the nature of the instruction
- any risks related to the matter workload or other time considerations.
- The details of the risk assessment should be included on the matter opening form, and a copy of this forwarded to the supervisor for further consideration, and to assist with subsequent supervision of the matter.

**7.6 Monitoring communications**

It is now seen as best practice for firms to monitor and supervise both incoming and outgoing communications (including letters, faxes, and – increasingly – emails).

**Incoming communications**
The monitoring of incoming communications is highly effective in identifying problems, risks or concerns that can then be addressed with the fee-earner directly involved.

Whilst this task should ideally be done by the supervisor, thus having the additional benefit of keeping the partner fully informed on different matters, this is not seen as being practical in many practices. Instead, many firms delegate this task to either more junior fee-earners or even to administrative assistants – with the specific intention of reviewing all communications for signs of client concern or complaints.

**Emails**
The increasing use of emails for both formal and informal communication poses significant challenges for practices in terms of supervision. The mere volume of email traffic through individual and team in-boxes often makes it impractical for supervisors to review it all, although many practices do. Others employ administrative staff to monitor emails to identify client concerns or alternatively use software packages to identify emails using abusive or offensive language that might identify a risk.

Those practices committed to monitoring email can reduce the burden by:

- banning or restricting the use of email for personal communications, and
- establishing a separate email address for incoming communications (property@lawfirm.com.au)

For most practices, however, supervisors must work with their teams to effectively supervise incoming emails. This will include requiring that:

- all incoming work-related messages are to be both attached to a specific client matter in the IT system, and also printed out in hard copy and placed on the appropriate file, and
- fee-earners report all concerning emails to the supervisor immediately
Colleagues and support staff

Practices should also consider the role of support staff and other fee-earners in their efforts to monitor communications.

Specifically, receptionists are often at the front line in dealing with client dissatisfaction, but vital supervision red flags can often be lost if a receptionist simply forwards a caller to a fee-earner who might be struggling to cope with a client or matter. Practices should therefore consider requiring support staff to alert supervisors to all instances of client dissatisfaction, so that the supervisor can address the issues.

Outgoing communications

In addition to requiring all outgoing communications to be stored to, and printed on, file, practices should also specify which communications need to be checked and approved by a supervisor before being sent.

Many practices retain the habit of having letters signed by partners. Most, however, are moving away from this practice, and are adopting more flexible arrangements for supervisors to check as required communications of varying formality or substance.

7.7 Formal supervision meetings

Formal one-to-one meetings should be the centrepiece of a practice’s supervision arrangements.

For reasons discussed in the next section, ‘open-door’ approaches to supervision are ineffective in isolation. All supervisors should timetable regular meetings with all their reports – and keep those meetings! When both the partners and junior fee-earner are busy, perhaps with deadlines to meet, it can often be a simple temptation for either party to miss one or two supervision meetings:

“I haven’t really got anything to discuss this week. Shall we just leave it till next month”

The risks of not holding regular one-to-one supervision meetings, however, are that:

- supervisors don’t know what is going on in their practice
- risks go unidentified
- bad behaviours and working practices go unaddressed, and
- assumptions are made by fee-earners that you are either too busy to assist, or are not interested in the specifics of files

For that reason, supervisors should look to schedule regular meetings with all their reports – weekly / monthly / twice monthly depending on experience and the nature of the work.

After meetings have been scheduled, the supervisor should then invest in preparation to ensure that they are as effective and worthwhile as possible:

- get a computer printout of all matters under the control of the fee-earner
- refer to client satisfaction data, risk assessment data, billings data and any other data available (see s7.1) to identify issues for discussion
- review any notes from the last supervision meeting
- advise the fee-earner if there is anything you specifically want to discuss.
- ask in advance if there is anything they want to discuss
- allocate sufficient time
- no interruptions: close the door and hold all calls
In the meeting:

- start by making a social connection – discuss weather, football, shopping – anything to help create a relaxed atmosphere
- avoid general or meandering discussions that cost valuable time and are of minimal value
- get your hands on the files – undertake quick file reviews of either all files, those files that might cause concern, or a random selection of files
- focus on key risk factors:
  - any risks common to the type of matter, the fee-earner, the practice area or your practice
  - personal wellbeing
  - legal process
  - communication and administration
- make notes on the files: indicate they have been reviewed
- ask them if they want to discuss or raise anything
- give specific direction as required (see section 8.3 on giving and receiving feedback)

Following the meeting, supervisors should then:

- make a note to follow-up as required
- action any commitments they have made
- make any separate personal notes as required to assist you in preparing for the next meeting

7.8 Reactive supervision: access, availability and attitude

When asked about their supervision arrangements many practices or individual partners are quick to mention their ‘open door’ policy. Whilst this might sound good in theory, the realities of legal practice mean that there are a number of problems with open door policies.

Open door policies can fail to proactively identify risks or fail to assist those who are either unaware they need assistance or are unwilling to seek help.

Many supervisors also react poorly to being interrupted by team members seeking assistance – responding in an aggressive, dismissive or irritable way. The result of this is that team-members are intimidated or otherwise reluctant to disturb the partner/principal, and subsequently try to deal personally with concerns and issues that really need a supervisors’ assistance.

More commonly, the circumstances of reactive supervision result in poor quality of discussion and communication between supervisor and team member, with supervisors failing to be fully supportive and eager to return to their own fee-earning, and fee-earners reluctant to seek more than brief or superficial assistance.

Because of the problems discussed above, reactive supervision or ‘open door policies’ play an important role, but are rarely effective in isolation. In addition to other arrangements discussed in this guide, supervisors should look to improve the quality of their reactive supervision by:

- ensuring they are available (in body and mind and attitude) to offer support to their team for x hours each week
- actively and regularly encouraging fee-earners to seek support as required
- informing their team of good and not so good times to seek assistance, and
- improving their personal stress management, time management and listening skills, so they are better able to give their full attention to team members when required
7.9 Induction and training

Effective training and induction arrangements are important for a number of reasons:

• minimizing any anxiety felt by a new employee
• to get the new employee ‘up to speed’ and working effectively and efficiently as soon as possible
• skills development, and
• risk management – ensuring competence and consistency re the practices working arrangements so as to minimize the risk of oversight or error

The other significant benefit of investing in effective training and induction is that it can help to significantly reduce subsequent demands on the supervisors’ time for support – some experienced supervisors suggest that an hour’s effective proactive training can save up to 10 hours in reactive supervision time: more if a number of people are trained at the same time.

7.10 Corrections and corrective actions

When supervision activities identify a concern on any particular file, the immediate impulse of most supervisors is to correct the mistake by addressing the symptom and taking whatever other actions are necessary to get the file back into shape and limit the risk of any (further) client dissatisfaction or the risk of a claim.

This approach, however, fails to question why or how the failing occurred in the first place, and therefore runs the risk of it happening again.

An underlying philosophy of risk management is that mistakes don’t ‘just happen’. There is normally an underlying cause, or a series of causes, that can be identified and then addressed through management arrangements. In this respect it is important to draw a distinction between ‘corrections’ and ‘corrective actions’.

To address failings on a systematic level, you have to change the system through ‘management arrangements’ addressing the root cause of any problem. These could include policies, plans, processes, procedures, checklists, training or other similar arrangements.

<table>
<thead>
<tr>
<th>Correction</th>
<th>Corrective action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Addresses the symptom</td>
<td>Addresses the underlying cause</td>
</tr>
<tr>
<td>Corrects the omission or failing</td>
<td>Corrects the underlying cause of the failing</td>
</tr>
<tr>
<td>Specific</td>
<td>General</td>
</tr>
<tr>
<td>Addresses a single instance: a single fee-earner, a single file</td>
<td>Addresses all instances: all fee-earners, all files</td>
</tr>
<tr>
<td>Actions</td>
<td>Management arrangements</td>
</tr>
<tr>
<td>Blame the individual</td>
<td>Blame the system</td>
</tr>
<tr>
<td>Short-term</td>
<td>Medium and long-term</td>
</tr>
</tbody>
</table>
The process of ‘getting to the bottom’ of any errors or failings can of course be time-consuming and might not be a top priority if urgent work is needed on a file. If you cannot implement corrective actions for any failings when they occur, it is therefore important to record them so they can be analysed at a later date. The information which should be recorded in this way includes claims, complaints, client dissatisfaction, near misses and any failings identified in supervision.

If you are able to record the risk information from your own practice, and use this to develop management arrangements to address your own specific risks or failings, you will be well on the way to establishing an effective risk management system.

7.11 Performance management

Performance management is the process of:

- objective setting
- review
- development planning, and
- evaluation

by which supervisors seek to improve the performance of their employees for the benefit of the organization.

In addition to the strategic benefit of both improving performance and aligning this performance with practice objectives, performance management also has a developmental benefit – developing employees who are good at their jobs – and administrative benefits in terms of salary decision, promotions and terminations, and organisational training needs.

The term ‘performance management’ is often confused with the term ‘performance appraisal’, but this confusion identifies one of the key points of performance management – that appraisal and assessment on their own are ineffective: that individuals have to be given direction and objectives clarified before individuals can be assessed on their success in meeting those objectives.
The importance of objective setting has led to the use of another term, ‘Performance planning and evaluation systems’ which can be defined as:

“Systems that seek to tie the formal performance appraisal process to the company’s strategies by specifying at the beginning of the evaluation period the types and level of performance that must be accomplished to achieve the strategy”


A performance planning and review system should aim to improve practice, departmental and individual performance by linking the goals of each. It should provide individuals with the opportunity to clarify how their role contributes to the success of the practice, to clarify standards of performance, and to identify opportunities for individuals to stretch themselves in the course of goal setting.

An example of a performance planning and evaluation form is attached as an appendix to this guide.

Performance evaluation criteria

The most common criteria for performance evaluation in legal practices is probably ‘productivity’, or more specifically, an individual fee-earners performance in meeting billable hour targets (BHT).

Recent years have seen a number of criticisms of the way legal practices emphasise BHT as a performance criteria. Criticisms include:

• BHT can encourage institutionalised inefficiency in working practices. Practices or fee-earners who do the work quicker record fewer hours, generating fewer fees, so some fee-earners will allow the work to expand to fill the time.
• BHT can tempt practices and fee-earners to ‘pad’ or inflate timesheets and bills.
• BHT can lead to the undertaking of unnecessary additional work (such as overzealous due diligence).
• BHT can lead, at both practice and individual levels, to a reduction in important non-chargeable activities such as client service, communication, the development of precedents or personal professional development.
• Individual BHT can discourage team co-operation and support.
• Demanding team BHT, when made the responsibility of a partner, can heighten the risk of bullying or unreasonable demands on individual team members.
• BHTs can create a long hours culture, and
• BHTs place an emphasis on quantity rather than quality, which can lead to both lower quality work, and low morale when performance management appears to be exclusively based on billable hour statistics.

Because of the above, it is advised that practices and supervisors develop a balanced range of performance evaluation criteria, of which BHT form only one part. Quality of work, business development, supervision of other staff, customer care and client development are all important to the development of fee-earners, and emphasizing these as part of performance management will minimize the risks of the negative aspects of billable hour targets.

7.12 Partner supervision and self-supervision

Partners, principals and supervisors need supervision too: neither experience nor seniority elevate supervisors above the human capacity to make errors, and the subsequent need for supervision.

If you work with other fee-earners, make sure that your files are audited or reviewed along with everyone else’s. This not only addresses the risk of oversight on your own files, it also reinforces the message to your team that file reviews are an effective and necessary business process rather than any comment on somebody’s competence or experience.

If you are the only fee-earner, you will essentially be self-supervising, and should consider either:

- conducting file reviews yourself – either auditing files against a checklist or revisiting the substantive legal content
- asking support staff to conduct a procedural file review, or
- identifying an external file reviewer - perhaps arranging a reciprocal agreement with another sole practitioner to review files, or persuading a retired former colleague to assist. (Note: If you do use an external file reviewer, you will have to consider client confidentiality)

You should also monitor the full range of practice information, including client engagement risk assessments, file inactivity, billings data and client satisfaction feedback to identify any concerns.

Whether you are a sole practitioner, or in a partnership where you are the most experienced in any given practice area, the value of regular discussions with a trusted advisor (either within the practice or external) cannot be overstated. Even where an advisor cannot match your legal knowledge, discussing your responsibilities, challenges and concerns with someone else can be rewarding, reassuring, and can also help to solve or avoid a number of pitfalls.
8. Supervision skills

Whilst some solicitors find supervision easier than others, supervision is not an easy art to master, involves more than common sense and natural intelligence, and often requires the development of an entirely different skill set.

Solicitors should not expect to acquire skills and become effective supervisors without the investment of some time and effort – including where possible, tailored supervision training.

Whilst this guide does not aim to be a comprehensive guide on personal supervision or leadership skills, and only has space to address a limited number of practical issues, the importance of personal supervision and leadership skills cannot be overemphasised. Readers are therefore encouraged to consider further training or development, or to read any one of the following excellent guides on leadership:

- Covey, Stephen (1992) “Principle Centered Leadership”
- Zabriskie, Kate (2009) “Supervision Skills for Managers”, Full Court Press

Providers or facilitators of Supervision Skills Training include the following:

<table>
<thead>
<tr>
<th>Queensland Law Society</th>
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<tbody>
<tr>
<td>In addition to regular conferences and seminars focusing on supervision, Queensland Law Society also offers in-house learning and development solutions, including supervision skills training and presentations.</td>
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8.1 Communication barriers

If you listen to the comments from both supervisors and supervisees, it is not difficult to detect some problems with communication. Typical partner comments might include “didn’t listen”, “slow”, “lazy” or “How many times do I have to tell him?”, whilst fee-earner criticisms might include “didn’t listen”, “treats me like an idiot”, or “didn’t explain”.

Assuming that we are dealing with reasonably intelligent, eloquent individuals, it can only be assumed that communication is a more complex process than some people imagine. In addition to the exchanging of recognized terms and phrases, effective communication requires an understanding of the roles played by attitudes, listening skills, partial understanding, expectations, prejudices, motivations, assumptions, codes and nuances.
Most of the above can in some situations assist communication, but they can also act as a barrier to effective communication.

Common ‘micro-barriers’ which can apply in nearly all situations, include:

- poor use of language by the sender
- not allowing feedback
- poor use of communication channels
- physical distractions
- communication overload
- poor listening technique
- unfair assumptions or evaluations
- excessive niceness
- bad atmosphere
- cultural differences

Additional ‘macro-barriers’ that might apply in specific situations include:

- geographic distance
- lengthy communication chains
- ineffective decision making processes
- excessive specialization leading to weakened common ground
- pressure
- differences in status

Supervisors need to be able to recognize all the potential barriers to effective communication and remove them for both themselves and their team.

8.2 Effective listening

One of the biggest problems with communication is poor listening skills. Here are a few tips to improve your listening skills.

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<thead>
<tr>
<th>Tip</th>
<th>Description</th>
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<tbody>
<tr>
<td>Stop talking</td>
<td>Stop dominating conversations. Stop interrupting. Give the other person a chance. Aim to talk for no more than 60% of the time</td>
</tr>
<tr>
<td>Try to put the talker at ease</td>
<td>Show you want to listen. Let them feel free to talk. Avoid distracting behaviours</td>
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<tr>
<td>Listen objectively</td>
<td>Try to forget any assumptions, prejudices</td>
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<tr>
<td>Try to understand</td>
<td>Put yourself in the place of the other person</td>
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<tr>
<td>Do not evaluate too quickly</td>
<td>Hear them out. Do not dismiss something without considering it first</td>
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<tr>
<td>Ask open questions</td>
<td>Avoid questions that might result in a limited yes/no response. Help the speaker to explain better so that you might understand better</td>
</tr>
<tr>
<td>Take brief notes</td>
<td>Taking brief notes shows you are listening and interested, and will help you remember. Avoid taking excessive notes, as this limits your potential for ‘active’ listening</td>
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<tr>
<td>Look for non-verbal communication</td>
<td>Non-verbal communication can be as informative and useful as words.</td>
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Demonstrate interest and understanding through verbal and non-verbal feedback

Solicitors are often very effective listeners, but don’t always give that impression because of minimal verbal and non-verbal feedback. Solicitors can sometimes ‘target in’ on the legal trigger points in conversation and follow their internal thought patterns to the extent that colleagues or clients do not perceive any interest or understanding.

To demonstrate interest and understanding, restate or paraphrase the speakers ideas, maintain eye contact, nod your head and be aware of the need to ‘stay in the moment’.

8.3 Giving and receiving feedback

Performance feedback (or communication) is a humanistic model of interaction designed to support and encourage staff to strive towards excellence. Feedback comes in two forms:

- Informal: offered regularly to coincide with excellence or difficulty
- Formal: where a specific time is set aside for both parties to review performance and discuss development plans

Staff should commit to participating in both informal and formal feedback on a regular basis.

What is feedback?

Feedback is commonly described as communication to a person or a team of people regarding the effect their behaviour is having on another person, the team, the organisation or the customer. Feedback can be defined in two ways:

- Positive: communicating about good performance
- Constructive: informing about an area in which performance could be improved

What isn’t feedback?

The following behaviours are not feedback:

- Criticism: The most popular meaning of criticism is disapproval expressed by pointing out faults or shortcomings. In a business or behavioural context, feedback focuses on the action, not the person, with the intent of clarifying where someone stands in relation to agreed standards of behaviour or performance.
- Dumping: this happens when someone unloads frustrations that have built up over some time. If the employee is unaware of their behaviour, dumping can be incredibly destructive and damaging. While the manager may feel better in the short term that they’ve got things off their chest, the target of their unloading has been given an unfair burden, often with little or no warning.
- Projecting: Managers can sometimes accuse their staff of the very things which they themselves are guilty of, putting the blame and responsibility for problems onto someone else.
Effective feedback

- is balanced and objective
- does not make judgements or generalisations
- should be frequent and consistent
- is immediate (as long as you have all the facts)
- focuses on where performance can be improved rather than what is unacceptable
- recognises accomplishments and keeps the employee motivated
- takes a problem solving approach where both parties constructively tackle an issue
- is balanced – what they do well and what they can improve
- describes actions or behaviours that the individual can address

Feedback should be FAST


Fast stands for frequent, accurate, specific and timely and these elements should be adhered to when providing feedback.

- Frequent: Staff should not wait for performance reviews to participate in feedback activities. Instead, managers should provide staff with feedback on a regular basis. Additionally, managers should also seek feedback from their staff on a regular basis.
- Accurate: People have limited perspective on their own performance. While self-evaluation is important, staff need input regarding their own performance from others. This input (feedback) must be accurate otherwise they will not recognise an opportunity to develop.
- Specific: Feedback must be specific. There is nothing more disempowering to someone than receiving vague, immeasurable feedback that offers no guidance about exactly what behaviours are causing the problem, or specific suggestions that outline possible solutions. Feedback must be specific to the employee so that they can attend to the feedback and produce the standards of performance required.
- Timely: Feedback must be provided as soon as possible after the behaviour is undertaken. The more time that lapses between behaviour and feedback, the less impact the feedback will have. Therefore, for optimal feedback results, feedback needs to be provided as soon as the behaviour is observed/becomes apparent.
Steps to undertake prior to giving feedback

1. Assess the current relationship
   • What is the nature of the relationship? Formal, informal or a mixture of both?
   • Are there clear goals and expectations about what behaviour and performance contributes to the achievement of those goals? If not, then feedback will always be perceived entirely through the employee’s frame of reference, which is potentially an unhealthy situation.
   • What feedback have you given to date? Every time a person is corrected, no matter how well it is done, a withdrawal is taken from the employee’s “emotional bank account”. If you do not have a history of making good deposits with that employee, then it’s highly likely that your feedback will have a far more adverse impact than you realise.

2. Know your staff
   • How much do you know about their personal life? There may be an explanation for their behaviour that you had not considered.
   • Do you know their personality type? Often this can provide clues into what may be causing the behaviour.
   • How have they responded to past feedback?

3. Identify your opportunity
There are good and bad times to give feedback. Positive feedback can be delivered by handwritten note or email, but is very powerful if done publicly as part of group meetings to praise and encourage. Constructive feedback is always best given one on one.

4. Communicate honestly and graciously
Stating the truth outside of the context of a supportive relationship can sometimes be quite damaging and destructive. Telling it like it is can sometimes be a smokescreen for either dumping or projection; sometimes both simultaneously. Although you cannot control how the other person receives feedback, you can couch feedback in ways that communicate that the person is still appreciated and accepted.

5. Emphasise the positive
Wherever there is an upside, focus on it. This is not false praise, or an unrealistic glass half full approach. Effective feedback relies on taking a positive attitude to the staff member and the situation. The praise sandwich approach is also an effective option for consideration: start with a positive, then provide constructive feedback, and then end with a positive.

6. Focus on the behaviour, not the person
Leave any personal bias at the door. Although different personality types have certain tendencies, they are just that - tendencies that can be helpful in some situations and unhelpful in others. This is just the way I am may be an explanation, but not an excuse.

7. Own your feedback
Feedback is your perception, not anyone else’s. Only speak for others as a last resort when it is either clear that the problem is shared by many people and an intermediary is required, or they cannot speak for themselves due to a power imbalance.

10. Allow time for reflection and response
What is said may come as a complete surprise, and take some time to adjust to. The party receiving feedback should always have a right of reply, unless they have clearly breached
policy that is a transgression deserving termination. If they do not accept your feedback at first, you may need to consider offering it again in a different way.

**Receiving feedback effectively**

- accept and discuss feedback
- allow the person to say what they need to say and listen attentively without interruption
- summarise and reflect what you hear
- if the feedback is factually incorrect, explain the situation calmly and objectively
- if the feedback is not constructive, ask for positive suggestions on how you might change your approach
- identify issues that may impact on future performance
- ask for help, training or resources if required
- requested feedback is more powerful so ask permission to provide feedback
- if there is no feedback ask for it; ie what am I doing well and what can I improve
- if feedback is vague, ask questions to clarify and ask for examples

**Tips for receiving feedback**


There is no point in asking others to give you feedback unless you are prepared to be open to it and to consider comments which differ from your own perceptions.

1. **Be explicit**

   Make it clear what kind of feedback you are seeking. If necessary indicate what kinds you do not want to receive. The feedback from others is entirely for your benefit and if you do not indicate what you want you are unlikely to get it.

2. **Be aware**

   Notice your own reactions, both intellectual and emotional. Particularly notice any reactions of rejection or censorship on your part. If the viewpoint from which the other is speaking is at variance with your own do not dismiss it: it can be important to realise the misapprehensions of others. Some people find it useful to partially dissociate or distance themselves in this situation and act as if they were witnessing feedback being given to someone else.

3. **Be silent**

   Refrain from making a response. Don’t even begin to frame a response in your own mind until you have listened carefully to what has been said and have considered the implications. Don’t be distracted by the need to explain: if you really need to give an explanation do it later after the feedback session.

Providing good feedback is a crucial skill to master. It takes courage, effort and a highly attuned awareness to others to be able to notice behaviour that should receive feedback. Then it takes patience, wisdom and courage to know how best to deliver it. Even positive feedback requires some forethought and planning to ensure it has maximum impact.
In a healthy work environment, feedback is given naturally on a day to day basis as required - not just at performance review time. Receiving feedback is also just as important. People need to be confident that they are being provided feedback because it is necessary.

Feedback, no matter how it is provided, should be attended to. Being open to receiving feedback is crucial for improving performance.

### 8. 4 Performance discussions

Performance discussions are one of the most important things a manager will do. Performance discussions are a dedicated time to build on and formalise all the important feedback about duties, expectations and performance that the manager has provided an employee to date. This is a time to have a more formalised discussion about the employee's performance and it should reflect the day to day coaching that has transpired throughout the year. It should be undertaken with great care and preparation, as the way a manager handles performance discussions can have significant impact on the morale and future performance of employees.

**Conducting the performance discussion**

Source: Indiana University, Human Resource Services

Tips for managers when conducting performance discussions:

1. **Set the stage:**
   - establish importance by holding in a private setting with no interruptions
   - provide a relaxed format
   - have all material at hand
   - establish rapport immediately
   - clearly explain the purpose and format of the discussion

2. **Start on a positive note.** Set the tone as one of communication and feedback, not one of judgment and critical evaluation.

3. **Discuss responsibilities and standards,** clarify expectations and compare actual performance to performance standards. Use documentation to discuss specific instances of performance.

4. **Be sure to give credit for achievement and work done well.** Give specific examples and mention resulting benefit to the organisation.

5. **Focus on important job dimensions.** Don’t deal with minor infractions of little significance. Discuss them at the time they occur and then forget them, unless you see a trend developing.

6. **Apply effective communication skills.**

   Encourage the employee to talk. Ask open-ended questions. Ask for the employee’s assessment, comments and suggestions.

   Use your listening skills and don’t interrupt. Check for understanding

   Avoid emotionally loaded expressions, such as, “You always...” and “You never...”
7. As with giving feedback generally, describe employee behaviours, not personality traits or attitudes. Constructive feedback focuses on specific action, never on the individual. Discuss positive as well as unsatisfactory performance. Provide specific examples and explain why these behaviors are problematic or how they benefit the organisation.

8. Minimise your role as a judge. Work for a collaborative environment.

9. Never compare one employee with another.

10. Check for presence of barrier or constraints to performance.

11. Work for understanding, rather than complete agreement. Be supportive. Ask what you can do to be of greater help. Emphasis should be on improvement and learning for the future rather than criticism of the past.

12. There should be no surprises. Poor performance should have been addressed when it happened. If performance has not improved, discuss it again and develop an action plan. The performance discussion is not the place to mention it for the first time.

13. Receive feedback in a constructive manner.

   • listen carefully and seek to understand what is being said. Don’t interrupt.
   • ask questions – get more information. Ask for examples.
   • liberally use the phrase, “Tell me more.”
   • try not to get defensive. Behaviours that hinder one from effectively receiving feedback are:
     - justifying
     - building a case
     - denial
   • don’t take it personally. Be open-minded – there may be a better way
   • admit mistakes. Don’t try to fix blame on someone or something else
   • thank the employee

14. End the performance discussion on a positive note.
9. Supervision, wellbeing and morale

The supervisor’s role in managing the morale and wellbeing of their team cannot be overstated.

Lawyers are currently leaving private practice in record numbers and ‘churn’ rates are as high as ever, suggesting morale is low in the profession generally. In recent years, research has also identified the extent to which solicitors suffer from depression and anxiety. In 2008, a study conducted by Beaton Consulting and Beyond Blue found that 15% of the lawyers surveyed suffer moderate to severe depression. Another survey from 2008, by Sydney University’s Brain and Mind Institute found that 28% of lawyers and students reported psychological distress severe enough to justify medical assessment, compared with 13 per cent in the general population.

Whilst many – even the majority - of the drivers of depression are not specific to legal work or the workplace, Professor Hickie from the Brain and Mind Institute has commented that “attributes common to lawyers such as perfectionism, anxiety and obsessionalism, put lawyers at high risk of depression... (and that)... other aspects of the profession, like its competitive and individualistic nature, could be changed in favour of a more collegiate approach”. Similarly, Ian Chung, a Sydney Doctor who works with NSW’s LawCare service has commented that “The culture and work style that is required in law are fuel for depression. Lawyers have to meet pressures such as deadlines and budgets. Overall it’s a fairly negative profession”.

In earlier analysis, US psychologist Martin Seligman identified the following three causes of demoralization in lawyers:

1. pessimistic explanatory style – seeing any negatives or problems as personal, permanent, pervasive
2. low-decision latitude – not having the ability to control work, or take steps to manage issues that are leading to demoralization, and
3. the win-loss / adversarial approach of legal work

In responding to the above, supervisors have key roles to play in both:

• working to eliminate or minimize the work-based risks or stressors that can contribute to depression, and
• recognising symptoms and supporting any colleagues who experience problems

Causes of demoralisation, coping and supervisor support

The key stressors affecting wellbeing in legal practice are summarized in the diagram and analysis below.
High workload and long hours

In addition to the general anxiety that time pressures can cause, high workload and long hours can be demoralizing or stressful for a number of reasons:

• they impact on work-life balance, and reduce the time people might have to either relax and enjoy family and friends, or to deal with specific home/life concerns or stressors
• time pressures, and specifically billable hour targets, can limit the potential for intrinsic rewards from work by placing an emphasis on quantity rather than quality, and limiting the time available to do superior work, particularly in relation to client service
• time pressures can limit the available time for the more rewarding aspects of work such as communications with colleagues or clients

Legal practice expects fee-earners to put extra hours in occasionally, but when long hours become the norm, there can be serious risks to wellbeing.

Supervisors can help by:

• monitoring workloads to ensure no individuals are working, or are required to work, excessive or unhealthy hours
• facilitating and encouraging flexibility, so fee-earners can meet both work and family/social commitments
• leading by example, leaving the office at a reasonable time, and encouraging others to do the same
• investing in IT and support staff to reduce any administrative burden, increase efficiency and help fee-earners get through their workload quicker
• offering time management support, particularly in relation to time recording
• ensuring that performance appraisal is based on a range of factors rather than solely on the quantity of billable hours recorded or billed

Low control

Everyone faces challenges or concerns, but when we feel we can not make decisions or control the situation, many challenges can become stressful. Low Control can be a particular problem for junior solicitors who are merely handed a file and told to ‘get on with it’, without being given any opportunity to negotiate what they do, how they do it, or when it needs to be done by.

Supervisors can help by:

• improving the quality of their delegation skills, ensuring two-way communication and allowing the fee-earner more control over how the matter is handled
• delegating authority as well as responsibility
• facilitating more client contact
• offering or facilitating more flexibility
• demonstrating trust and faith in the fee-earners ability, and
• proactively discussing career progression, and providing increased choice and flexibility in career pathways
Poor or unsupportive supervision

Supervisors can help by:

• being approachable and responsive
• keeping regular meetings
• providing or arranging opportunities for skill development
• mentoring
• providing positive feedback and encouragement
• being solution-focused rather than blame – fixing, and
• encouraging a culture of team support

Individualist, competitive, adversarial culture

Supervisors can help by:

• encouraging a culture of team support, and
• developing broad performance management measures

Conflicts

Supervisors can help by:

• facilitating the development of both personal and team conflict management skills
• adopting a ‘zero tolerance’ approach to unacceptable behaviour, and
• encouraging a culture of team support

Pessimism

Pessimism – the belief that problems or challenges are personal, permanent or pervasive - can seriously affect a solicitors attitude to coping with challenges and similarly affect their propensity for anxiety, depression or demoralization.

Supervisors can help by:

• Sending the message “It isn’t personal” by focusing on external causes or systems rather than personal characteristics.
• Sending the message: “It isn’t permanent” by focusing on opportunities to control or change the situation, or identifying challenges as transient or occasional.
• Sending the message “It isn’t pervasive” by making the point that certain challenges are isolated and do not affect performance or control in other areas.
• Encouraging personal management of pessimism. Suggestions include:
  • rationally challenging pessimism (why is it all going to go badly?)
  • defensive pessimism (The risk management approach – identifying potential problems, but then managing the situation to ensure things go smoothly)

Developing resilience

Supervisors should also aim to assist individuals within their team to increase their personal resilience to the stresses and strains of work in a legal practice. This might include offering talks on stress management or wellbeing, or investing in skills development in areas such as time management or assertiveness.

Recognising symptoms and providing support

All supervisors need to be able to identify any employees who are experiencing difficulties and support them appropriately. For more information, please see the Queensland Law Society LawCare “Leader Guide” which is attached in appendix one.
10. Motivating and retaining staff

The motivation levels of staff are important for a number of reasons:

• motivated people perform better
• are more productive, and
• are also more likely to remain with their current employers

With high levels of turnover amongst junior fee-earners, and research showing that loss of each fee-earner can cost firms up to three times the relevant salary, firms should be highly motivated to ensure their staff are motivated.

But what are the best ways to motivate staff?

Many firms, and the supervisors within them, continue to believe, or at least act as if money, and the lure of more money through the attainment of partnership status, is the main motivator for young solicitors. The traditional assumption/cliché about solicitors’ careers went something like this:

• articled clerks joined law firms and stayed there for 35 years
• they worked hard and put in long hours
• two years experience would bring a good salary
• eight to ten years would bring equity and riches
• in their late fifties they would retire
• lifestyle and job satisfaction issues could be mostly ignored
• the deal worked and everyone was happy

The old formula, however, doesn’t work anymore:

• partnership takes longer to achieve now than 10 years ago
• lifestyle issues and job satisfaction are increasingly important compared to either salary or job security
• there are currently record drop-out rates of junior solicitors
• “fee-earners see what partners do and they don’t fancy it”
• in London, The Lawyer found that only 37% of assistant solicitors in the nine biggest firms had the ambition to become partners

So, do practices want to compete on price for fee earners who are not interested in partnership? To react to the changing realities, practices need to think again about what motivates junior solicitors, offer different career paths, working environments, opportunities and motivations. Below are the results of some recent surveys on staff retention, job satisfaction and motivation amongst law firm employees.

Main ingredients driving staff retention and job satisfaction
The Law Society of England and Wales, April 2007

1. good supervision or management
2. opportunities for career progression
3. challenging and interesting work
4. competitive salary and benefits package
5. good working environment and colleagues
Main reasons for leaving US Law firms
Hildebrandt International

1. minimal training / minimal partner contact
2. career development opportunities missing
3. poor morale
4. no idea of where the firm is heading
5. partners openly criticize one another
6. minimal loyalty across whole firm
7. feel disconnected from firm – no involvement

What is valued most by employed solicitors
Hildebrandt International

1. substantive training and mentoring
2. heavy partner contact
3. client contact / substantive responsibility
4. on time and honest evaluations
5. ‘exciting atmosphere’ and ‘fun’
6. partners get along well
7. feel involved in direction of firm
8. team oriented
**Most effective practices in encouraging employee retention**

Law Society of England and Wales, April 07

(How important are these factors out of ten?)

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<tr>
<td>1</td>
<td>Challenge</td>
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<tr>
<td>2</td>
<td>Client contact</td>
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<td>3</td>
<td>Responsibility</td>
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<td>4</td>
<td>Teamwork</td>
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<td>Developmental supervision</td>
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<td>Technical skills development</td>
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<td>7</td>
<td>Transparent career path</td>
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<td>8</td>
<td>Adequately resourced teams</td>
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<td>9</td>
<td>Formal appraisals</td>
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<tr>
<td>10</td>
<td>Valued formally through tangible benefits</td>
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<tr>
<td>11</td>
<td>Valued formally through intangible benefits</td>
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<td>Soft skills development</td>
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<td>16</td>
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<tr>
<td>17</td>
<td>Home working</td>
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<tr>
<td>18</td>
<td>Predictable working hours</td>
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<tr>
<td>19</td>
<td>Time off after long hours</td>
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<tr>
<td>20</td>
<td>Work allocated on the basis of clients needs</td>
<td>6.33</td>
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The above should give supervisors some clues and tips on how to manage differently and on some of the negatives to try and avoid.

For specific firms, it is of course dangerous to pay too much attention to generalities, and you will need to identify, for each individual in your team, their specific aims, objectives, hopes, fears, expectations and ambitions. This can be done through, for example, supervision meetings and annual appraisals.

Other arrangements/initiatives that can also give you valuable information are exit interviews for those staff that do leave, and confidential HR surveys.
Once you have gained an understanding of their individual goals, concerns and ambitions, you should tailor your supervision and other activities to appeal to them. In addition to any specific actions, here are some general tips:

• match people to jobs
• appeal to their individual goals, concerns and ambitions
• provide specific goals and feedback on their progress towards these goals
• don’t assume that either pay or partnership are the only factors involved
• link rewards to performance
• give them interesting work
• show appreciation for their work
• think about the working environment and culture of the firm
• keep them informed and involved
  - about the firm / department generally
  - about their own prospects, opportunities
• try to offer flexibility and fairness in working hours, remuneration, career options
• align individual skills and goals with the firm’s objectives

**Does money motivate?**

The content for this section is adapted from the reading materials from the Queensland Law Society Practice Management Course ‘Management’ Section, developed with University of Queensland Business School.

It has been argued that money can motivate some people under some conditions. The more relevant question is: Does money motivate most employees in the workforce today to higher performance? The answer to this question is NO!

For money to motivate an individual’s performance, certain conditions must be met. First, money must be important to the individual. Second, money must be perceived by the individual as being a direct reward for performance. Third, the marginal amount of money offered for the performance must be perceived by the individual as being significant. Finally, management must have the discretion to reward high performers with more money.

Money is not important to all employees. High achievers, for instance, are inherently motivated. Money usually has little impact on these people (although it will often by proxy convey the symbolic message). Similarly, money is relevant to those individuals with strong lower-level needs that can usually be satisfied by that money.

Money would motivate if employees perceived a strong linkage between performance and rewards in organizations. However, pay increases are far more often determined by community pay standards, the national cost-of-living index, and the organisation’s current and future financial prospects than by each employee’s level of performance.
11. Time recording, billing and supervision

As discussed in chapters 1 and 2, ensuring efficient billing and ethical and accurate time recording is a responsibility of all supervisors - and this requires a mixture of guidance, training, support and monitoring.

A first step is to ensure that all fee earners accurately and promptly record all of both their chargeable and non-chargeable time. This policy is vital to ensure that a supervisor has all the information they need to manage performance and direct fee-earners to priorities.

Supervisors should also ensure the accuracy of time recording – limiting or avoiding any adjustments either upwards or downwards.

Adjusting time upwards is clearly unethical and supervisors should aim to implement a number of arrangements to limit the risk of ‘padding’:

• making padding or unethical time recording a disciplinary offence
• reducing or eliminating any real or perceived pressure to exaggerate time
• supporting staff in their efforts to time record efficiently
• monitoring time recording and questioning any time entries that seem excessive, and
• effective delegation and workload management to limit any temptation to pad timesheets and enable fee-earners to meet any billable hour targets or expectations

Perhaps the biggest issue that supervisors should be aware of is not necessarily the clear-cut instance of manipulating time-sheets, but rather the individual instances of willful inefficiency that can become institutionalized. Taking a relaxed two hours to do a task that could with no risk to quality be done in 90 minutes not only raises ethical concerns, it can also have a serious impact on the competitiveness of any practice in the medium and long term.

Turning the issue on its head, however, supervisors should also be wary of facilitating a culture in which fee-earners record time according to their perceptions of how long a task should have taken them rather than how long it actually took them. It is not uncommon for young fee-earners, perhaps insecure in their abilities, to compare their speed of completing tasks against the speed of more experienced colleagues, and consequently edit their recorded time entries downwards. Similarly, supervisors should either introduce strict policies on writing-off time, or should retain such discretion for themselves.

Another reason for poor time recording is uncertainty over what should or should not be recorded as billable to clients. Supervisors should look to offer guidance; training and support on this issue (See the ‘Queensland Law Society Guide to Costs, Billing and Profitability’ for more information (available from www.qls.com.au).

Whatever support is provided to fee-earners in relation to time recording, practices should implement arrangements to ensure that all bills are ethical and comply with practice policy. This would normally require bills to be checked and approved by a supervisor or partner before being sent to a client. This is an opportunity for the partner to discuss any concerns with the fee-earner, make amendments as necessary, and also identify any areas where other fee-earners might need additional guidance or training. The simple knowledge that all bills will be checked will also add discipline to the practice of time recording.
Specifically, when reviewing individual bills, supervisors should undertake the following checks:

- sanity check – is the bill fair and reasonable for the work done?
- estimate check – how does the bill compare to the original estimate?
- ethics check – should any listed time entries be non-chargeable? Is there any evidence of ‘padding’?
- double entry check - time entered twice against the same single task
- wrong matter check – time from other matters that has been misallocated
- overworking check – is there any evidence of unnecessary activities, such as overzealous due diligence?
- narrative check – are the narratives sufficiently clear and detailed?

In the longer term, supervisors also need to measure and monitor both practice and individual performance in a number of key areas.

- the percentage of each fee-earner’s day that is accountable for (the goal should be 100%)
- KPI’s for chargeable time each day/week/month
- the recovery rate for the department and individuals (the % of work in progress that the client ultimately pays for)
- the accuracy of initial estimates
- the level of unbilled work-in-progress for each fee-earner
- debtor days for each fee-earner
- team and individual profitability, and
- client satisfaction in relation to individual’s performance on costs disclosure and billing

Constant monitoring of these measures will identify issues that supervisors need to focus on and prompt them to consider where new guidance or support is needed.

Supervision meetings should aim to discuss these indicators, with direction and support offered accordingly. One of the main discussion points should be non-chargeable time, as this is a great way of identifying poor working practices and inefficient use of time – time that could have been billed. Develop a series of codes for non-chargeable time and analyse these as closely as the chargeable time: Should it have been chargeable? Should it have been done at all?

In addition to the time itself, supervisors should also check the narratives or descriptions of work done when simple task categorization is inadequate to describe the nature and justify the value of the work. This is important not just for internal supervision purposes but also for client communication, and particularly in demonstrating the value of the work to the client.

**Time recording and morale**

Many fee-earners dislike time recording, and it can have an impact on morale. Supervisors can limit the risk of low morale resulting from the need to time record by:

- ensuring that time recording and billable hour targets are just one – not the only – way to manage performance and productivity
- discussing and agreeing billable hour targets with staff, not just enforcing them
- building in allowances for client care, marketing, personal development etc, and
- taking a supportive approach to time recording, rather than merely looking for poor performers
12. Managing the supervision burden

With all the demands and requirements on supervision, it could easily become a full-time job if not managed properly. Partners, of course, need to earn their own fees in addition to supervising the work of others, so need to find ways to manage the supervision burden. The two main methods of managing the supervision burden are as follows:

• implementing arrangements so that many supervisory roles or functions are reduced, shared or fulfilled by other people or systems
• making sure the time you do spend on supervision is spent efficiently and effectively, on the most important supervision tasks: often, better supervision does not necessarily mean more time and money, it just means more focus.

In this guide, we’ve primarily looked at the issues of learning and motivation. Motivation is an area that is often neglected by supervisors, and partners should aim to spend a significant amount of their supervision time on roles that assist with motivation. As discussed earlier, learning can, in part, be broken down into the different roles of explaining ‘what’, ‘how’ and ‘why’. In an ideal world, you would be able to fulfill all three of these roles, but with time pressures, this might not be the best use of your time, might not be cost-effective, or even possible.

As the strongest form of learning, with the lowest cost, partners should aim to spend as much time as possible on the higher level ‘why’ side of things, providing a deeper level of understanding than can be provided elsewhere. Activities here will include not only the highest level explanations on why things are done a certain way, but also the bigger picture, inclusive discussions on client requirements etc that motivate fee-earners.

Often, these are just the discussions which get neglected by supervisors because time pressures and immediate concerns prompt them to focus on the matter in hand, which normally require only functional descriptions or requests (the ‘what’). Here are some tips for limiting the supervision burden, particularly in relation to ‘what’ and ‘how’ supervision functions – leaving your time clear to spend on more valuable, high level supervision. You will see that these arrangements not only save you time, they are also the types of activities that help to motivate your team.
Effective recruitment procedures  
Try to recruit in order to minimize the amount of ‘on-the-job’ training and intensive supervision that will be required.

| Formal induction and training arrangements | An hour’s good training can save up to ten hours in reactive supervision time. Ensure all new recruits are given a thorough introduction and overview into your practices processes, procedures and working arrangements, so that valuable supervision time is not taken up with low-level advice and support. |
| Invitation other relevant fee-earners into your client meetings | This will motivate your fee-earners by demonstrating or implying a higher level of trust and responsibility, but will also save you some time re subsequently relaying the client’s instructions to that fee-earner. Any internal discussions following the client meeting are likely to be more ‘equal’ – a discussion rather than a delegation, which again is motivating. |
| Entrust your fee-earners with some client meetings | If you want to go a step further than above, in both saving your time, and demonstrating your trust of your staff, let them take responsibility for some client meetings themselves. |
| Team supervision – encouraging senior associates to supervise the juniors | Encouraging the senior fee-earners to coach and develop the junior ones helps to develop both groups, whilst saving you some time. |
| Group supervision – supervision through team meetings | If the same advice guidance has to be shared, or the same issues discussed throughout your team, it is often better to do it in a group meeting than through 1-2-1’s. This approach will allow an inclusive, objective discussion, will limit the risk of comments being taken as personal criticism, and will also save you time. |
| Procedural supervision and risk management - file audits etc | Providing checklists/protocols and having fee-earners check each other’s files for compliance against these is not only an effective risk management arrangement, it also facilitates some best practice insights and discussions as fee-earners collect ideas for improvements from seeing others file management. |
| Knowledge management and reference resources | Try to ensure that you are not the only reference point for factual reference matters of law. Invest in your knowledge management systems – both your own precedent library and other resources such as books and online services. |

Below are also the results of the recent survey by the Law Society of England and Wales.

**Most cost effective supervision practices** (TLSEW, April 07)  
*How important are these factors? (out of 10)*

| Personal access to supervisors | 8.96 |
| Clarify of objectives | 8.52 |
| Good explanation of work involved | 8.48 |
| Support for training and development | 8.48 |
| Situating the work into the bigger picture | 8.4 |
| Clarify of rule | 8.32 |
| Clarify of performance systems/measure | 8.28 |
| In-role lessons learned logged/reviewed | 7.13 |
| E-access to supervisors | 6.79 |
| On exit lessons learned logged/reviewed | 6.78 |
Appendix one: Lawcare leader guide

Leader Guide

LawCare
Taking Positive Action

Exterlnly provided by:
Assure Programs
people matter

QLS has engaged Assure Programs
to provide this service.

Queensland Law Society
What is LawCare?

LawCare is an Employee Assistance Program which provides free, confidential and voluntary counselling services to QLS members, their immediate family and legal support staff. The aim of LawCare is to assist with the resolution of work related and personal problems which may affect work performance or quality of life.
This guide has been prepared as an introduction to LawCare. It will help you as a leader identify employee issues that impact on wellbeing, productivity, and safety. It will also assist in approaching employees regarding these issues, and initiating appropriate referrals to the LawCare service. People are your greatest resource. A valuable feature of LawCare is its ability to help you manage your human assets effectively.

**Introducing LawCare**

LawCare is a confidential, short-term counselling service to assist employees with work or personal issues impacting on their performance. Employees attend LawCare services on a voluntary basis. They may either be self-referred or recommended to the service by a leader. Similarly, confidential LawCare services are available to all leaders to assist them in addressing their own issues that may be impacting on their quality of work or personal relationships.

**Why have LawCare?**

Identifying and addressing problems at work can be stressful for both the employee and the leader. Experience has shown however, that when people are helped to overcome their problems, whether they are personal or work related, they can emerge as more valuable employees.

With LawCare, professional counsellors are on-hand to help resolve these issues. This minimises the time you may need to spend supporting troubled employees, as well as delivering other significant benefits, including:

- Increased employee performance, motivation and wellbeing
- Employee retention
- Reduced absenteeism
- Improved work environment and work relationships

**Important aspects of LawCare**

**Ensures confidentiality at all times**

LawCare is a completely confidential service, ensuring the anonymity of those seeking help whilst promoting a ‘safe’ and trusting environment.

If an employee chooses to take part in LawCare, no record of their involvement will be kept on their personal file nor their participation discussed with any other person without the employee’s written consent.

**Attendance is voluntary**

Employees can be informed about the LawCare counselling option, but it is the individual’s decision to seek help – remember, it’s their choice.

As participation in LawCare is voluntary and confidential, LawCare counsellors can not consult employees solely on a team leader’s recommendation.

**Partnering with your leadership**

LawCare acts in a partnering role. LawCare professionals deliver workplace focused counselling and psychological services directed at the timely resolution of employee issues that may be beyond your responsibility. In doing so, LawCare supports and enhances your leadership. However, the counsellors in no way assume your role in managing employee work performance.

**What is the role of LawCare?**

- Early, problem-focused intervention
- Practical, short-term counselling
- Specialist assessment and referral

**Who can use LawCare services?**

- QLS members and their support staff
- QLS members’ immediate family

LawCare is an effective support tool for your leadership.
Who are the LawCare providers?
LawCare is an external member counselling service provided by Assure Programs. Assure Programs LawCare providers are tertiary qualified, registered psychologists and clinical social workers, with extensive counselling experience across a broad range of workplace issues.

Where are LawCare providers located?
Assure Programs has a well-established national network of over 300 providers located throughout every metropolitan and regional area of Australia and New Zealand.

How do I inform my employees of LawCare?
Regular promotion of LawCare is essential for initiating a positive response. Display posters, distribute brochures and inform employees through team meeting announcements and workplace newsletters.

The Leader’s role in referring employees to LawCare
In a leadership role, you have the responsibility of managing, directing and showing support for employees who are experiencing difficulties impacting on their work performance, whether they are of a personal or work-related nature.

It is often difficult for employees to accept that certain problems are affecting their attitude and/or job performance. Frequently, employees who have persistent performance or attendance problems are found to have underlying difficulties. LawCare can assist to provide solutions to many of these problems.

LawCare assists with personal and workplace issues including:
- Stress reactions and symptoms
- Organisational change
- Rehabilitation difficulties
- Interspersonal skills
- Anxiety or depression
- Handling traumatic events
- Relationship breakdown
- Parenting and elder-care
- Work/life balance
- Interspersonal conflict between colleagues
- Burnout and lack of motivation
- Alcohol and substance abuse
- Work performance issues
- Harassment and bullying
- Relationship and family troubles
- Grief or bereavement
- Health concerns
- Financial difficulties
- Career uncertainty
- Customer aggression
- Gambling problems

In effectively managing these issues, your role as a leader involves the following:
- Step 1: Early recognition of the problem
- Step 2: Approaching the employee regarding the matter
- Step 3: If appropriate, referring the employee to LawCare for assistance
- Considering a Specific Counselling Referral
- Considering additional services offered by Assure Programs

The following section provides guidelines to assist you in working through these options.
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LawCare is an external member counselling service provided by Assure Programs. Assure Programs’ LawCare providers are tertiary qualified, registered psychologists and clinical social workers, with extensive counselling experience across a broad range of workplace issues.

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LawCare assists with personal and workplace issues including:

- Stress reactions and symptoms
- Organisational change
- Rehabilitation difficulties
- Intercultural skills
- Anxiety or depression
- Handling traumatic events
- Relationship breakdown
- Parenting and elder-care
- Work/life balance
- Intercultural conflict between colleagues
- Burnout and lack of motivation
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The following section provides guidelines to assist you in working through these options.
Effective supervision in legal practice
Queensland Law Society

As a leader, you may have encountered employees with job performance issues and/or uncharacteristic behaviour. Sometimes people clearly communicate that they are experiencing difficulties and may even approach you directly. Often however, it is through observing employees’ behaviour and non-verbal communications, that you receive the message. You are in an ideal position to detect the early-warning signs that can indicate an employee has a problem. These may include:

- Sudden shift in performance or reduced quality of work
- Frequent absence from work
- Loss of sense of humour
- Emotional outbursts
- Becoming aggressive or irritable
- Obvious signs of stress and anxiety
- Difficulty with decision-making and trouble concentrating
- Lack of interest in work/life in general
- Erratic behaviour, mood swings or changes
- Becoming withdrawn
- Conflict with co-workers
- Unrealistic standards for self and/or others

Handout 1 (page 21) provides a checklist to guide you in determining if an employee needs assistance. While your role in the early observation of these indicators is vital, it is essential you do not form a subjective judgement. The next section guides you in approaching an employee to discuss issues impacting on their job performance whilst maintaining objectivity.

You are in an ideal position to detect early-warning signs

### Step 1: Early recognition of the problem

### Step 2: Responding: Effectively approaching a troubled employee

Approaching an employee to discuss performance issues is one of the most challenging and important responsibilities of a leader. Many leaders feel apprehensive and unsure about addressing a troubled employee. Some are uncomfortable with the possible employee response (resistance, defensiveness, hostility); others may find it difficult to display objectivity in the face of the many disruptions an employee may have caused. However, if left unaddressed, these issues can magnify.

Leaders can contact LawCare at any time for advice on how to approach employees and the services that can be offered. This is especially helpful in dealing with urgent people-management issues, including critical incidents and distressed employees (please refer to MSP section on page 16).

Below are some general guidelines that may be of help.

**General guidelines**

**Being prepared**

1. Approach the employee at the earliest indication of the issue.
2. Arrange a time and suitable location for a private meeting with the employee.
3. Take time to prepare yourself by gathering relevant notes and documentation and organising your thoughts. This includes mentally rehearsing your approach and being clear on the employee’s work performance history; having clearly defined work performance expectations; and establishing your desired outcomes from the conversation.
4. If indicated, consult with your Human Resource department to ensure the meeting is consistent with your organisation’s policies and procedures.

**Conducting the interview/conversation**

5. Throughout the discussion, use active listening skills to create rapport:
   - Refer to the person by name
   - Nod and make eye contact
   - Allow equal airtime
   - Encourage the person to communicate by using open-ended questions such as, “What?” and “How?”
   - Confirm the content of the message
   - Summarise the discussion and clarify any misunderstandings
Agitation and Anxiety:
  a. Remain calm and steady.
  b. Encourage the person to focus on the facts of the situation and not so much on future consequences and negative possibilities.
  c. Reassure the person that the issues can be addressed and solutions can be found.
  d. Be clear and specific in your statements. This will help to minimise the scope for misinterpretation.
  e. If the agitation does not subside, suggest pausing for a break, before proceeding.

Complaining and Whingeing:
  a. Listen to the complaint or concerns, encouraging them to be as specific and concise as possible, sticking to the facts. Ask for specific suggestions on how to resolve or solve the problem.

9. Seek support or debriefing for yourself from LawCare if a specific interaction or combination of difficult conversations is impacting negatively on your work performance or quality of work life. Remember that leaders have needs too, and that seeking assistance when needed is a sign of strength and maturity.

Handout 3 - Critical Event Checklist

Leaders Supporting People Following a Critical Event

During Incident Response
- Initiate the organisation’s emergency and incident response protocol
- Remove employees to a place of safety and comfort
- Contact your manager or response team for advice
- Follow directions and approved communications/scripting from management or your ‘Response Team’
- Remain available and visible

Post-Incident Response
- Determine the nature of the event and appropriate recovery response
- Contact LawCare on 1800 177 743
- Maintain the collective morale with calm and supportive behaviours
- Offer practical and social assistance, especially for ‘displaced’ staff
- Encourage staff to use their personal calming and coping strategies
- Use simple directions and continue to update staff
- Continue to monitor people and the environment, to minimise unnecessary ‘exposure’
- Reassure staff by listening, normalising stress, and defusing
- Checking in and following up (over the following week)
- Encourage staff to return to routine, when they indicate they are ready
- Avoid evaluation, blaming, rushing staff back to work or minimising the event

LawCare will:
- Assist you in assessing the situation and the appropriate response
- Provide immediate phone support to team and/or management where required
- Arrange for a counsellor to be available on-site or available for support, where the circumstances and nature of the event require this
- Provide education, information, defusing and then feedback to managers
- Remind and help you to monitor staff over the weeks following an incident

Essential Tasks Completed:
- A nominated person _________________________ has created list of staff involved for records.
- A nominated person _________________________ has provided LawCare number and offered counselling and other support to staff on this list.
- A nominated person _________________________ has contacted other staff (including, where indicated, those on leave) to inform them of any significant news, support, and outcomes.
Handout 4: Critical Event – Employee Handout

Supporting Our People Following a Critical Event

Our organisation understands that critical incidents can bring expected, unexpected, and sometimes delayed, impacts for our people. Therefore, we will put into place a number of automatic steps to support you:

- We’ll check in on you and ask what you need
- We’ll offer immediate phone support, where needed, to all people impacted by an incident
- When required, we’ll arrange a visit from our counselling service (LawCare); they will come on site and talk to us all about normal reactions and the triggers to look out for, so we can support our co-workers and/or link into a confidential individual session later on
- We’ll automatically offer you an individual confidential ‘check in’ with LawCare; we’ll also follow up with those involved and ask how they’re going
- We’ll encourage (and help set up) a ‘follow-up’ appointment with LawCare for those who’ve been ‘closer’ to a critical incident and who we feel could benefit from further support
- We’ll consider and follow advice from your supervisors and LawCare when looking at getting all the staff and crew back to normal duties and productive work

These services are voluntary, but highly encouraged, so we will offer them, and check in with you.

These are the sorts of questions we’ll ask you about your energy and health during a follow up:

- How is your energy?
- How is your concentration?
- How is your motivation?
- How is your heart rate and nerves?
- How is your tension levels?
- How is your frustration levels?
- How is your sleep pattern?
- How is your feeling crook or healthy?
- How is your readiness to go back to work?

How else can Assure Programs help?

Assure Programs also offers additional services that can complement the role of LawCare. These include:

- Organisational culture and stress reviews/assessments
- Conflict management and mediation
- Targeted workshops and training programs, e.g. dealing with difficult customers; personal and interpersonal effectiveness; managing misunderstandings and stress management
- Career transition coaching and support – assist with complex career transition, including managing redundancies, and organisational change
- Executive/manager coaching and development
- Team development
- Performance and change management
- Psychological assessment for selection and development

Your HR Manager can organise provision of these comprehensive services. For further information regarding these specialist programs, please call our Director of Organisational Development Services at Assure Programs on 1800 505 015.
Contacting LawCare

Assure Programs counsellors are located throughout Australia. To arrange an appointment, obtain details on how to access the service locally, or for 24 hour contact with a counsellor phone:

**Freecall:** 1800 177 743  
**Email:** info@assureprograms.com.au  
**Web:** www.assureprograms.com.au

Useful information and Assure Programs Tips Sheets on topics such as parenting, sleep, anxiety and depression can be accessed on our website (use the URL above) and click on the Additional Resources section.
Appendix two: File reviews and the Lexon insurance enhanced management review program

Lexon’s new enhanced management review program is set to reduce the risk of a claim against legal practices while also reducing the annual insurance base levy by an estimated 8.5%.

The development of this innovative program, available to all Lexon’s insured legal practices (including sole practitioners), follows claims analysis that found excessive workloads or human issues were often contributing factors where there was a failure to adhere to practice systems and checklists.

Lexon also found that firms with an excellent claims history generally had regular file review processes in place to ensure the firm’s systems were followed. These reviews have been proven to be effective in assisting in claim prevention as they enable the early identification of the possible effects of excessive workloads, human factors, mere oversights and staff who are taking on work outside of their area of expertise.

As an effective risk management tool, Lexon’s Enhanced Management Review Program recognises the value of periodic file reviews.

How the enhanced management review program works

The Enhanced Management Review Program involves your practice conducting file reviews on 4 different files every two months, using Lexon’s file review checklist. If you have an existing file review checklist in place prior to the introduction of this program it may still be used subject to Lexon’s prior written approval. You will also need to maintain an Enhanced Management Review log which will record all file review activity, review result plans and finalised file review checklists. You will need to retain these records for at least five years.

Lexon has developed an Enhanced Management Review Pack to support the implementation of the program. The pack (available online at www.lexoninsurance.com.au) comprises:

- Enhanced Management Review Program terms (to be read in conjunction with this overview)
- The Enhanced Management Review file review checklist
- an Enhanced Management Review log

What are the benefits of the enhanced management review program?

Aside from having the peace of mind that you’re adhering to some of the best practice risk management strategies, you will also receive an Enhanced Management Review program discount on your base levy from 1 July 2010.

While you will be notified of the final percentage closer to renewal time, it is anticipated to be about 8.5%. To ensure equity, it is estimated that all practices will receive a discount of at least $1,000 and up to a maximum of $25,000. Also, a practice’s pre-discount levy will be used in any claims loading calculations, i.e. your practice will be credited with the full base levy payable for the purpose of any claims loading calculation, notwithstanding you received a reduction on the same under this Program.

For more information, please visit www.lexoninsurance.com.au

Lexon Insurance file review checklist

Note: please include Lexon EMR File Review Checklist from:

https://www.lexoninsurance.com.au/content/lwp/wcm/myconnect/Lexon/Managing+your+risk/EMR+Program
### Performance Planning

Effective performance planning relies on clear performance standards being established and discussed. These standards describe the actions or results necessary for performance.

#### Position Description

- **Mandatory for each position, regardless of classification**
- **My position description is up to date and accurately reflects my role.**

#### Individual Performance Plan (IPP)

<table>
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<th>Strategic Plan Target/Outcome</th>
<th>SMART Goal</th>
<th>Activities (required to achieve goal)</th>
<th>Completion Date</th>
<th>Resources Required</th>
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#### IPP Updates

Updates can be made to individual performance plans upon mutual agreement between the manager and employee. Updates can be made to the plan at any time throughout the year.

<table>
<thead>
<tr>
<th>Date</th>
<th>Update</th>
<th>Notes</th>
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Each time the form is used it must be signed, scanned and sent electronically to Human Resources.

Signed

Manager  
Employee  
Human Resources

Date  
Date  
Date

---

**Date**

- Meeting focus
  - Performance Planning/Development Planning
  - Quarterly Checkpoint
  - Performance Review
  - Interim Discussion

- Purpose of the position

- Performance Planning

- Position Description

- Individual Performance Plan (IPP)

- IPP Updates

---

**Name**

- **Position Title**
- **Team**
- **Department**
- **Division**
- **Job Stream**
- **Employment Status**
## Performance Review

### Position Description

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<th>Justification</th>
</tr>
</thead>
<tbody>
<tr>
<td>Competently performed?</td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

### Individual Performance Plan

<table>
<thead>
<tr>
<th>SMART Goal</th>
<th>Was the SMART goal</th>
<th>Date of Achievement</th>
<th>How was the goal achieved / Why was the goal not achieved?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Achieved?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
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<td></td>
<td>No</td>
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<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<td></td>
</tr>
<tr>
<td></td>
<td>No</td>
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</tr>
</tbody>
</table>

### Other Achievements

What other employee achievements have positively contributed to the success of the organisation?

<table>
<thead>
<tr>
<th>Achievement</th>
<th>Contribution to the Success of Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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</tbody>
</table>

### Assessment

Based on the review above, please indicate the employee’s level of performance.

<table>
<thead>
<tr>
<th>Current performance (please select one)</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Below expectations</td>
<td>Employee did not meet performance expectations of their IPP and/or position description.</td>
</tr>
<tr>
<td>Competent</td>
<td>Employee competently performed their position description and achieved all goals detailed in their IPP.</td>
</tr>
<tr>
<td>Exceeds expectations</td>
<td>Employee competently performed their position description and achieved all goals detailed in the IPP. Employee proactively undertook continuous improvement activities that positively contributed to the success of the organisation.</td>
</tr>
</tbody>
</table>
## Development Planning

### Competency Development

( Mandatory for each position, however the employee may not have any competency gaps)

This organisation is committed to providing employees with the training and support to be able to perform. Competency development is focused on enabling employees to perform their role.

<table>
<thead>
<tr>
<th>Core competencies of role that require development</th>
<th>Suggested Training/Action</th>
<th>Target completion date</th>
<th>Status</th>
</tr>
</thead>
</table>

### Professional / Personal Development

(Optional for employees)

Professional / personal development is focused on career growth and/or continuous learning.

<table>
<thead>
<tr>
<th>Area of development</th>
<th>Suggested strategy</th>
<th>Target completion date</th>
<th>Status</th>
</tr>
</thead>
</table>

### Development Plan Updates

Updates can be made to development plans upon mutual agreement between the manager and employee. Updates can be made to the plan at any time throughout the year.

<table>
<thead>
<tr>
<th>Date</th>
<th>Update</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
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</tbody>
</table>
## Appendix four: Supervision checklist

<table>
<thead>
<tr>
<th>Does your practice...? / Do you?</th>
<th>yes/no</th>
</tr>
</thead>
<tbody>
<tr>
<td>Understand the full range of benefits of effective supervision</td>
<td></td>
</tr>
<tr>
<td>Focus attention on a range of supervision issues and objectives (not just risk management and/or billable hours targets)</td>
<td></td>
</tr>
<tr>
<td>Understand the scope of professional standards guidance and regulation in relation to supervision.</td>
<td></td>
</tr>
<tr>
<td>Undertake / provide training on effective delegation</td>
<td></td>
</tr>
<tr>
<td>Appraise supervisors on the quality of their supervision, and make supervision a performance criteria</td>
<td></td>
</tr>
<tr>
<td>Allocate specific times for both proactive and reactive supervision duties</td>
<td></td>
</tr>
<tr>
<td>Reduce billable hour targets for supervisors</td>
<td></td>
</tr>
<tr>
<td>Monitor a range of risk indicators to assist with supervision</td>
<td></td>
</tr>
<tr>
<td>Undertake regular file inactivity checks</td>
<td></td>
</tr>
<tr>
<td>Implement a range of risk management arrangements to assist with supervision</td>
<td></td>
</tr>
<tr>
<td>Provide fee-earners with a series of checklists to minimize oversights</td>
<td></td>
</tr>
<tr>
<td>Integrate legal process into IT workflow management programs</td>
<td></td>
</tr>
<tr>
<td>Undertake regular file reviews covering substantive legal content</td>
<td></td>
</tr>
<tr>
<td>Undertake regular file reviews covering procedural file management and communication</td>
<td></td>
</tr>
<tr>
<td>Undertake initial risk assessments on all new files and clients – and review this data for supervision purposes</td>
<td></td>
</tr>
<tr>
<td>Monitor all incoming letters and faxes to identify potential risk</td>
<td></td>
</tr>
<tr>
<td>Make arrangements for the effective management and monitoring of incoming emails</td>
<td></td>
</tr>
<tr>
<td>Work with support staff to ensure information about client dissatisfaction is reported to the supervisor as well as the fee-earner</td>
<td></td>
</tr>
<tr>
<td>Make arrangements for the review of outgoing communications as required</td>
<td></td>
</tr>
<tr>
<td>Keep regular one-to-one supervision meetings for all staff</td>
<td></td>
</tr>
<tr>
<td>Prepare for all supervision meetings by printing out a list of open matters and reviewing risk data</td>
<td></td>
</tr>
<tr>
<td>Ensure that all fee-earners have the time, opportunity and encouragement to approach their supervisors for support</td>
<td></td>
</tr>
<tr>
<td>Provide / undertake training on stress management and time management to assist supervisors in offering supportive reactive supervision.</td>
<td></td>
</tr>
<tr>
<td>Schedule regular team meetings</td>
<td></td>
</tr>
<tr>
<td>Identify and track the completion of all corrective actions</td>
<td></td>
</tr>
<tr>
<td>Measure performance according to a broad range of criteria</td>
<td></td>
</tr>
<tr>
<td>Ensure adequate partner supervision, and self-supervision.</td>
<td></td>
</tr>
<tr>
<td>Offer supervision skills training</td>
<td></td>
</tr>
<tr>
<td>Provide training for supervisors on avoiding, identifying and sympathetically addressing any concerns about employee wellbeing.</td>
<td></td>
</tr>
<tr>
<td>Proactively manage individual workloads</td>
<td></td>
</tr>
<tr>
<td>Actively manage the ethical and motivational risks connected with billable hour targets</td>
<td></td>
</tr>
<tr>
<td>Manage supervision time effectively, and actively manage the supervision burden</td>
<td></td>
</tr>
<tr>
<td>Ask for feedback on supervision skills and arrangements</td>
<td></td>
</tr>
</tbody>
</table>