Relationship Status

Learning objectives:

By the end of this unit you will be able to:

- Recognise & assess a situation where a married person can be regarded as unmarried
- recognise & list factors in determining when an unmarried person can be regarded as being in a de facto relationship
- understand the effect of case law in section 8 of the Social Security Act and be familiar with it

Relevance of learning to your role:

- the majority of MSD investigations are relationship cases
- having an understanding of what ingredients make up a relationship is essential
- knowledge and appreciation that no two relationships are the same

Behavioral competencies for success:

- Critical thinking - objective analysis and evaluation
- Analytical – Attention to detail
- Empathy

- Interpersonal skills
- Open minded
- Non-judgmental
- Decisive - ability to make correct decisions

Introduction

Under Section 8 of the Social Security Act 2018, the Ministry of Social Development (MSD) is able to regard as single, any person who is married or in a civil union, or regard any two people who are not legally married or in a civil union, as party to a de facto relationship.

There are discretions contained in Section 8:

- MSD may regard a client who is legally married or in a civil union as being single where the client is -

  (a) living apart from their spouse or partner; and

  (b) not in a de facto relationship.

- MSD may regard any two people as being parties to a de facto relationship who are not legally married or in a civil union but have entered into a de facto relationship.

Once this discretion is exercised, MSD may determine the date on which they started living apart, or together as the case may be. MSD may then in their discretion grant, refuse, suspend, terminate, reduce or increase a benefit from that date.

Regarding a married or civil union person as single, Section 8(2)

The purpose of section 8(2) is to provide the same benefit rights of unmarried and de facto persons to those who are married or in a civil union, who were living apart from their spouse or partner. This means that the income of the applicant's spouse or partner would not be taken into account in determining eligibility for benefit.

In order to be considered to be "living apart" people who are legally married or in a civil union, would usually be expected to be residing in separate locations as well as there being a breakdown in the relationship. However, there may be circumstances where we would regard people as

"living apart" even though they remain residing at the same location, where it is established that the relationship has in fact ended.

As a guideline, married/civil union applicants can be regarded as single when they are living apart by virtue of a legal separation, agreement or order. If the parties are living apart but there is no legal agreement to support this, you must look at the degree of permanency of the separation.

In determining whether a husband and wife or civil union partners are separated, there are guidelines. These are taken from previously decided court cases and are commonly known as case law. In the case of Excell vs Department of Social Welfare, Fisher J stated:

A legally married husband and wife have a legal duty to co-habitat. Co-habitation ceases only while there is an intention by either spouse to repudiate the obligations inherent in the matrimonial relationship and a manifestation of that intention by conduct. The conduct in question is concerned not with any single factor but with an aggregation of many.

Some further guidelines that will assist to determine whether a husband and wife or civil union partners are separated are:

- whether or not the parties are living in the same house
- how long they continue to live in the same house
- whether they provide a home for their children in that home
- the extent to which they share the expenses of the home and of living
- the extent to which they share the household tasks
- the extent to which they communicate
- whether they have ceased to engage in sexual relations
- the manner in which they appear and hold themselves out to the public

As a rule, parties would not be regarded as having severed their relationship permanently when they are living separately due to:

- housing difficulties
- absence due to business pursuits

- illness of relatives
- hospitalisation of one partner
- where they occupy separate accommodation during the week due to employment in different towns but are together at weekends

Permanent separation with the express or implied intention of ending the marriage would clearly be enough to treat the parties as single under paragraph (2). Conversely, it is clear from the case law that a temporary separation of finite duration would be unlikely to lead to the couple being treated as single.

Where a separation is of uncertain length you would need to look at all the circumstances of the case before exercising your discretion to treat them as single under paragraph (2).

Regarding two people not legally married as parties to a de facto relationship, Section 8(4)

In 2004 the Civil Union Act was introduced which allowed for people in a relationship with a person of the same gender to have their relationship legally recognized.

To reduce the need to change all New Zealand's statutes that referred to relationships Section 29A of the Interpretation Act 1999 was introduced.

From 1 April 2007 same-sex de facto couples were treated the same as opposite sex de facto couples for benefit purposes.

The ability to determine that two people are living in a de facto relationship is contained in Section 8(4) of the Act. This is based on the argument that the treatment for the purposes of benefit entitlement should be equal between married/ civil union couples, and two people not legally married. This is so that the income of both partners can be taken into account for benefit purposes.

The main justification for this is that it would be wrong in principle to treat a person who is living in a defacto relationship, which approximates to a legal marriage or civil union, more favourably than if that person was legally married or in a civil union.

As discussed earlier, MSD is empowered under Section 8 to fix a date at which it can be clearly determined that two people are living in a de facto relationship. It is necessary to relate the date "to some evidence directly connected to the couple behaving as a couple" based on best evidence.

Section 29A of the Interpretation Act 1999 provides a meaning of the term de facto relationship. The question as to whether such a relationship exists will be a question of fact in each case. You will need to look at all the circumstances of the case.

To be a de facto relationship, the relationship must be "in the nature of marriage".

There are certain indicators of a relationship in the nature of marriage that have been laid down in case law and these are covered in some detail below.

Ruka

The leading case on the issue of relationships in the nature of marriage under the previous section 63(b) is Ruka v Department of Social Welfare [1997] 1 NZLR 154, decided in 1996 by the Court of Appeal.

A number of succeeding cases have endorsed and somewhat refined the statements made in Ruka. The majority in Ruka decided that section 63(b) had to be interpreted in the light of the purpose of the Act.

Thomas J stated that:

"I believe that the objective of section 63(b) is clear. It is to ensure that unmarried couples who enter into a relationship akin to marriage are not treated more favorably for benefit purposes than those who are legally married."

The test of what constitutes a relationship "in the nature of marriage" was stated by the Court of Appeal in Ruka, as having the following two key positive features:

1. **Financial inter-dependence** in the sense of at least a willingness to support the other partner ... if that partner has no income of his/her own or to the extent that it is or becomes inadequate, AND

2. A degree of companionship demonstrating a continuing **emotional commitment.**

Financial Inter-dependence:

For the purpose of the Social Security Act 2018, for a relationship to be a de facto relationship a degree of financial interdependence must be present.

The commitment must go beyond mere sharing of living expenses, as platonic flat-mates or siblings living together may do; it must amount to a willingness to support if the need exists.

Financial interdependence can be displayed in a number of ways including-

- direct financial interdependence such as joint bank accounts or assets or joint loans/credit
- mutually agreed financial arrangements, such as how each has assumed the responsibility for the payment of household expenses
- willingness to support if the need exists

The issues of what arrangements can be constitute financial inter-dependence has been considered in DW Ray –v- Department of Social Welfare and R –v- Alice Fay Batt.

Refusal to support in order to claim benefit

A couple cannot qualify for single benefits if there is a refusal to support, or an arrangement that support will not be given, which is motivated by the knowledge that the dependent partner will then be able to claim a benefit. This cannot create a genuine absence of financial support.

Emotional Commitment:

When determining emotional commitment it is necessary to identify key positive features found in marriages.

Prior to Ruka the Ministry used indicators outlined in the Excell and Thompson decisions to determine whether a relationship in the nature of a marriage existed. The Court found in Ruka that these indicators are useful but cautioned against using these as a checklist.

The usefulness of the factors lies in their use as a tool to identify the presence, or otherwise of physical factors that can lead to finding that the parties has so merged their lives that they can be regarded has having assumed responsibility, including financial responsibility.

Indicators to be taken into account in Section 8(4)

In the Thompson decision from 1993 the Judge said that the following indicators will be relevant:

1. Whether and how frequently the parties live in the same house.
2. Whether the parties have a sexual relationship.
3. Whether the parties give each other emotional support and companionship.
4. Whether the parties socialise together or attend activities together as a couple.
5. Whether and to what extent the parties share the responsibility for bringing up and supporting any relevant children.
6. Whether the parties share household or other domestic tasks.
7. Whether the parties share costs and other financial responsibilities by the pooling of resources or otherwise.
8. Whether the parties run a common household, even if one or other partner is absent for periods of time.
9. Whether the parties go on holiday together.
10. Whether the parties conduct themselves towards, and are treated by friends, relations and others as if they were a married couple.

In some cases, other matters not on the list may well be relevant and require assessment in the overall picture.

Once the physical or factual aspects of the relationship have been examined the mental ingredient must be considered. That ingredient involves some commitment by parties to their relationship. It need not necessarily be a commitment to a long term relationship. But it must, at least, be a commitment for the foreseeable future. Any lesser commitment would, in my view, be neither sufficient for nor consistent with a relationship in the nature of marriage. As with proof of all states of mind it will usually be necessary to decide whether the necessary commitment exists by a process of inference from what the parties have said and done.

Thompson was discussed in Ruka. The indicators listed in Thompson can be used to help determine whether the necessary elements of a relationship in the nature of marriage exist. In other words, the indicators can be used to help show whether there is cohabitation, together with the financial independence and mental/emotional commitment necessary to determine that a relationship may be in the nature of marriage. They cannot be used as a simple checklist so that if a certain number of indicators are present then the relationship is in the nature of marriage.

Domestic Violence

Ruka is the leading case on the issue of a relationship in the nature of a marriage. This case raised the issue of what effect domestic violence would have on a relationship in the nature of a marriage for Section 63(b) purposes.

In this case Battered Women's Syndrome was offered as a defence in that the defendant's state of mind was affected by the battered woman syndrome to such an extent that she lacked the necessary intent to commit the offences.

The Court of Appeal rejected the contention that Battered Women's Syndrome was a specific defence open to Ms. Ruka.

However, the Court of Appeal stated that a woman suffering from Battered Women's Syndrome (BWS) is less likely to be seen to be living in a relationship in the nature of a marriage – the abuse whether physical, mental or emotional toward a female partner in a battering relationship will most likely negate any key positive features of a marriage that may have been identified.

The Court of Appeal went on to say that in relation to Ms Ruka;

> *"She was bound to the relationship by fear resulting in a psychological paralysis which effectively adhered her to the relationship for as long as Mr. T wanted. She could not be said, therefore, to possess the requisite mental and emotional commitment to the relationship for it properly to be described as being in the nature of marriage. She simply remained in the relationship because she had been battered into a state of terror and was powerless to do otherwise".*
>
> *BWS provides an explanation for the continued sharing of the same accommodation and the other linkages, real or only apparent, between them. Unlike someone not suffering battered woman's syndrome the appellant had an inability to choose to live elsewhere. The circumstances of living under the same roof, indeed sharing the same bed, is misleading and must carry little weight.*
>
> *Thus, less weight, if any, would need to be given to the fact that the parties live together when the woman is staying under the same roof as the batterer out of fear and helplessness. Similarly, the fact that the parties may be said to have sexual intercourse loses its significance as an indicia of marriage if the woman's consent to sexual intercourse is coerced and she is regularly raped. Nor can it properly be concluded that the woman is offering the man emotional support*

and companionship when any such apparent support is induced by the man's violence and can more accurately be described as "traumatic bonding". The fact that the parties may socialise together and attend activities and go on holidays as a couple would also need to be given less weight when the wife's participation is governed by the man's will and dictated by the unending rule of terror, violence and abuse."

Where domestic violence is raised in any investigation the level of violence would need to be investigated.

When faced with a case of domestic violence, it would be appropriate to ask for any verification or information that may help support their claim, for example:

1. GP or hospital records,
2. Police complaints/callouts,
3. Domestic Violence Act applications/orders,
4. Statements from neighbors, friends, relatives,
5. Whether alleged partner has convictions for domestic/violence.

When interviewing the victim of this violence, we would want to ascertain:

1. the level and frequency of the violence
2. the degree of control over the beneficiary by the violent "partner"
3. the beneficiary's freedom/control over her life (going out, having friends, dress style)
4. the degree of fear held by beneficiary
5. the existence of support networks (family, friends she could turn to)
6. whether the beneficiary wanted to/wants to leave the relationship, to escape the violence

Relationship status and the Student Allowances Regulations

For Student Allowance purposes, a partner is someone that a student is in a de facto relationship with.

From 1 January 2009 the age test for a relationship changed from 25 years to 24 years.

To be in a de facto relationship the student and their partner must both be 24 and over, or one or both of them are under 24 and there is a dependent child.

The same age test applies to marriages and civil unions.

Further information

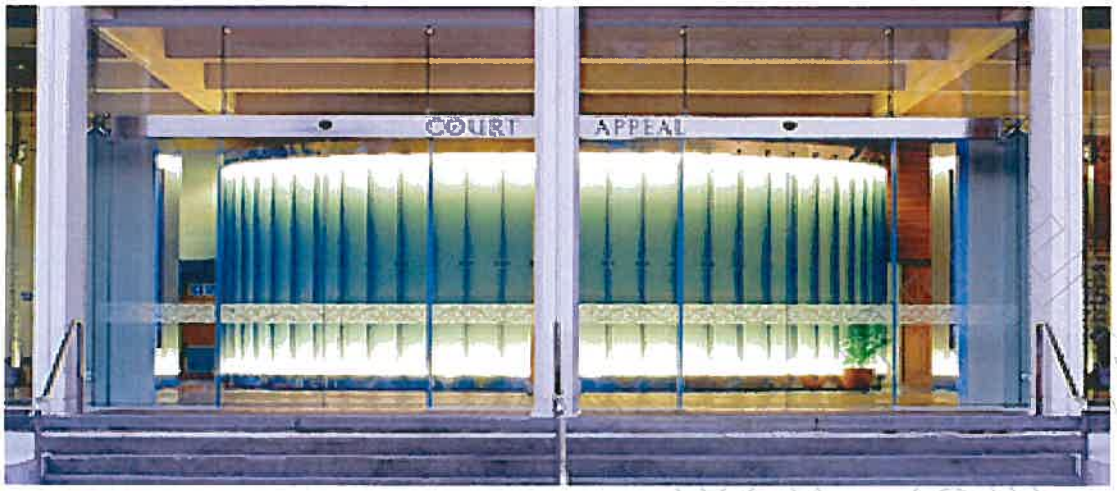
The following link is a research paper by John Hughes, published by Victoria University in 2005, about Lone Parents and Social Security. It contains some interesting reading about some of the history and legal decisions including Ruka and Excell.
https://www.victoria.ac.nz/law/research/publications/vuwlr/prev-issues/vol-36-1/hughes.pdf

Test Your Knowledge

Congratulations on completing the Relationship status module!

For course sign off, and to test your knowledge, please return to the main page to complete the quiz.

1. What is our leading Case Law for relationships? Why?
2. Explain the main consideration in this case law?
3. What two factors must be present when determining a relationship? Explain what these are and define these.
4. What other factors could also be present when determining a relationship? Explain what these are and define these.



Reviews and Appeals

Learning objectives:

By the end of this unit you will be able to:

- understand the process of an application for review
- be aware of what decisions can be reviewed/appealed

Relevance of learning to your role:

- understanding the review process
- what are the differences in review processes for the different legislation we work with
- ensure a consistent approach to the review and hearing process

Behavioural competencies for success:

- Analytical thinking – attention to detail
- Effective communicator both written and verbal
- Logical thinking - ability to write reports logical and in a chronological sequence
- Integrity
- Being objective
- Consistency

Social Security Act 2018

People may apply to have a decision made by MSD reviewed if they disagree with it.

A review of decision is an opportunity for the applicant to advise that they disagree with a specific decision made.

An applicant can apply in writing for a Review of Decision (this may be in a letter, email or an application form) when they have received formal notification of (and do not agree with) a decision which has been made under the provisions listed in sections 395-399 of the Social Security Act.

This includes decisions made under:

- the Social Security Act 2018
- any provisions of Parts 1 to 6 and Schedules 1 to 5
- a special assistance program approved by the Minister under section 100 or 101
- Part 6 of the Veteran's Support Act 2014
- part 1 of the New Zealand Superannuation and Retirement Income Act 2001
- the Family Benefits (Home Ownership) Act1964 or
- regulations made under the Residential Care and Disability Support Services Act 2018. This also includes decisions made under 398 and 399.

Click on the link to find out more information - Doogle - Reviews of Decision

Housing, Restructuring and Tenancy Matters Act 1992

A tenant can apply for a Review of Decision when they have received formal notification of and disagree with a decision relating to:

- the assessment or re-assessment of whether:
    - they qualify for social housing
    - the property still meets their needs
- the calculation of their Income Related Rent
- the establishment and recovery of Income Related Rent debt

A tenant can appeal to the Social Security Appeal Authority when they do not agree with a decision which was upheld by the Benefits Review Committee under an application for Review of Decision.

Click on the link to find out more information - MAP - Housing reviews of decision

Applications for review

Reviews of Decision for benefit and housing matters are both reviewed under sections contained in the Social Security Act 2018.

Section 391-394 of the Social Security Act 2018 allows a client to apply for a review of certain decisions made within the Social Security Act. Regulation 246 of the Social Security Regulations 2018 states that an application for a review must be received in writing. Section 392 states that the review must be received within three months of the client being notified of the decision that was made.

Section 392 does allow for a review to still be considered if it has been received outside the allowable three month timeframe. However the Benefit Review Committee must first confirm that the applicant has good reason for their delay in applying. Only once a Committee has agreed that there is a good reason for the delay can they consider the substantive issue of the review being sought.

The Report to the Benefits Review Committee should be completed on the out of time issue only. The committee must consider whether there is good reason for the delay. If the committee finds that there were no good reasons for the delay, the committee may decline to hear an application for review more than 3 months after notification of the decision. The committee would not consider the substantive issue. The applicant does not have the right of appeal to the Social Security Appeal Authority if a committee determines that there are no grounds for the decision to be reviewed outside of the three month timeframe.

MSD records and monitors the progress and outcomes of all reviews lodged. Currently these are recorded in a computer system named 'HIYA' (Here Is Your Answer).

Internal review

The first stage in the process is to re-examine the decision being reviewed. It is important that any new information provided by the applicant is taken into account at this point. If the result of that review is

to uphold the original decision in whole or in part the matter must then be referred to the Benefit Review Committee ("the Committee"). A report to the Committee is prepared this can be by the original decision maker or a report writer.

During the internal review your manager will ask another manager to review the decision. The purpose of this is to have an independent person look at that case and ensure that the decision that has been made is correct before the case carries on to the Benefit Review Committee stage.

When you do not have to complete the internal review template

If you find that the original decision made was incorrect it may be unnecessary for you to complete the Internal Review template. You should discuss the case with your manager and correct the decision immediately.

If you receive a review of decision and it is received outside the 3-month period for lodging a review – if you believe the decision is correct an Out of Time review will need to be submitted to the Benefit Review Committee solely for a decision on whether there was a good and sufficient reason for the delay. If the Committee finds there was a good and sufficient reason for the delay, then they will allow the review and the matter will be referred back for a report to be prepared on the substantive issue. (Please note: When a review is received 7 years or more after the decision was made, an internal review is not required. However, if the decision is found to be incorrect, correct it immediately.)

Ensure that any decisions made are documented on the applicant's file, in HIYA-ROD and in CMS and IMS. HIYA should always be updated to reflect the decision and fully noted.

Report to the BRC

The report is a crucial document in the BRC process as it tells the story to the Benefits Review Committee who are not familiar with the events of the case. It may also help clarify matters for the applicant so that, although they may not agree, they may understand why the particular

decision was made. The report is also to ensure that the process is open, and the applicant knows fully how MSD came to the decision.

You should also think about witnesses that might be necessary to support your case. You may need to arrange for witness to come along to the hearing to support your case.

There will be "experts" in your region or business unit that have completed the report writing training. Utilise the knowledge of these experts to assist you when you are writing your report.

Once the report has been prepared and had a Quality Assurance check, it is submitted to the Benefit Review Coordinator who will contact the Applicant to arrange a suitable venue, time and date to hear the case. MSD, the applicant, their Advocate, Lawyer or support people are invited to attend the hearing.

Constitution of Committee

Schedule 7 establishes Benefit Review Committees.

The Benefits Review Committee is made up of three members. Two members are from MSD and the third member is a community representative.

The staff members must have had no prior involvement with the decision being reviewed. This includes such activities as signed off correspondence and computer-generated letters with electronic signatures of Service Centre Managers.

A community representative is appointed by the Minister to represent the community interest, and must be a resident, or closely associated with the region.

All three members of the panel must be present at the hearing to make a decision.

The applicant can object to any member being part of the Benefits Review Committee, by stating the reasons for his or her objection. If grounds are found for disqualification, or there is an issue with a particular panel member that will interfere with the process of natural justice, that panel member is usually replaced. The applicant would usually discuss this with the Benefits Review Coordinator.

Disqualification

No members of the Benefits Review Committee can hear a case if he or she:

- Has a direct financial or personal interest in the outcome;
- Has had any prior involvement in the case;
- Has some personal connection with the applicant, presenter or witness/es – apart from working relationships;
- Has a personal prejudice for or against a person/s involved in the case;
- Has pre-decided the case and come to it with a closed mind.

If any of these criteria apply the BRC member (including community representatives) must disqualify him or herself from the hearing.

It is important that panel members consider any small contact with the applicant when considering disqualification. This may cause difficulties in Service Centres in isolated areas; however it is important that the integrity of the BRC process is maintained.

Jurisdiction - can the BRC review the decision?

The BRC cannot review a decision (i.e. the BRC does not have jurisdiction) if:

- it is not a decision listed in sections 395-399 of the Social Security Act
- the matter has been heard previously by the BRC or by another judicial body
- the review is outside the three month review period and the committee considers there is not a good reason for delay

What can't be reviewed under sections 395-399?

A client has no right of appeal to the Appeal Authority (and therefore no right to apply for a Review of Decision):

- for any decision made on medical grounds for Supported Living Payment (health condition, injury or disability), Jobseeker Support (health condition, injury or disability), Child Disability Allowance or Veterans Pension
- for any decision made (on medical grounds or on grounds relating to capacity to work) to require a Jobseeker Support (health

condition, injury or disability) client to be subject to, or continue to be, subject to part-time work obligations under section 141 and section 155 of the Social Security Act 2018
- for any decision to decline or revoke a deferral on medical grounds of Jobseeker Support
- for any decision that the client did not have a good and sufficient reason for failing their drug test obligations, as they are not addicted to or dependent on controlled drugs
- where the application for benefit has lapsed under section 297 of the Social Security Act 2018
- for any decision that has been made on defining job seeker activities

Other areas have a restricted right of appeal only. For example in the case of Residential Care Subsidy applications only the decision relating to income and asset testing can be reviewed. Eligibility for funding or the conditions of funding are decisions not able to be reviewed. Nor is the decision to grant or decline a Residential Care Subsidy Loan.

There are separate appeal provisions for decisions made on medical grounds.

Other decisions made by MSD that are not listed in section 395-399 and cannot be reviewed include those made in relation to:

- Employment Assistance programmes
- Student Allowance and Student Loans under the Education Act 1989
- Service Complaints
- Referral for prosecution

It follows that there is no right of review to the Benefits Review Committee under these grounds.

Reviews and prosecution

Clients can apply for a review of a decision that is also being referred for prosecution action. As mentioned previously the decision made to prosecute a client is not able to be considered by a Committee. The substantive issue of whether the overpayment is correct can be considered.

MSD should not seek adjournments in relation to any review process on the basis of awaiting an outcome of any District Court action. However the applicant may do so. It may be imperative to them to request an

adjournment so that they can freely submit their arguments to a Committee without the fear of further self-incrimination.

If the applicant does not seek an adjournment and the review hearing is heard before any outcome of the criminal proceedings MSD should give the 'caution' to the client at the commencement of the review hearing. This could then allow any admissions or confessions to be called upon for the criminal proceedings and would be admissible evidence in the District Court.

Procedure on review

Where the internal review outcome is not favourable or only favourable in part for the applicant, the decision must go before the Benefits Review Committee without any further request from the applicant.

Where the internal review fully overturns MSD's decision the issue will generally be resolved. However the applicant may still want to go to the BRC. This is their right and it can occur even though there may be no issue for the BRC to consider.

Where a decision is to go to the BRC for a hearing a Report to the Benefits Review Committee needs to be completed. The information from the internal review will generally form part of the Report to the Benefits Review Committee. (The template for this report is available in HIYA).

The committee must act independently of MSD and make a decision within the law. The committee will look at the relevant Law and Policy and how this should be applied in the particular situation and whether the decision was fair and reasonable in line with the relevant Law and Policy.

The Benefits Review Committee will outline the hearing format on the day of the hearing. The Social Security Act 2018 does not set out a hearing procedure. The BRC needs to clearly state the process for the hearing to each person present at the hearing. The process adopted must be fair and reasonable.

It is essential that the committee's decision reflects the relevant law, and is reached in a fair way. This means that the committee should:

- Check to ensure that the applicable legislation from the time of the original decision is being applied;
- Identify and understand the requirements of the legislation. For example, when considering whether to recover a debt under Section 208 of the Social Security Regulations 2018, the committee should

understand what each of the specific requirements mean. For example, considering whether the debt was the result of an error made by MSD;
- Consider all the options available to the applicant. For example, the committee should consider not just whether a debt was properly established, but whether that debt should be written off, or not recovered under the provisions of the Act;
- Fully explain the legal constraints and requirements to the applicant and ask the applicant to comment on how he or she meets each specific requirement;
- Decide whether the applicant meets any of the specific legislative provisions you are dealing with. Avoid concentrating on one issue. Look at the case in a holistic way;
- If necessary, use prior Social Security Appeal Authority decisions to assist in deciding a particular case. Apply rulings by the High Court on interpretation of the law which are binding. If you are unsure of the extent of the application of the ruling to the case you should then consider seeking legal submissions.
- Act within the law.

It is important that panel members understand the difference between law and policy. The function of the BRC primarily is to check the law has been correctly applied. Policy is MSD's interpretation of the law and how it should be applied.

Constitution of the Social Security Appeal Authority

The SSAA is an independent tribunal established under Schedule 8, clause 1 of the Social Security Act 2018 to decide appeals on benefit entitlement. The Ministry of Justice administers the SSAA. Members are appointed by the Governor-General on the recommendation of the Minister.

Decisions of the Authority are referred to by the case number and the year the notice of appeal was filed, for example SSAA decision 73/95 is a decision of the Authority that relates to an appeal filed in 1995. The reference will also state whether the case is reported or unreported.

Decisions that can be appealed

The categories of the decisions that can be appealed to the Authority are set out earlier. The relevant sections are 397-399 of the Act which have been quoted earlier in this module.

Procedures on appeal

If the BRC upholds the original decision, the client then has the right to appeal that decision to the Social Security Appeal Authority (SSAA), an independent tribunal administered by the Ministry of Justice.

If one of your cases is appealed, then it will need to be reviewed by an independent person before it is prepared for appeal. This is to ensure that the decision is evidentially sound.

When the SSAA receives an appeal, it asks the Ministry to prepare a report detailing the matters considered in reaching the decision. Appeals officers complete these reports on behalf of the office which made the original decision.

In the course of preparing MSD's case, appeals officers contact frontline staff for more information, or to recommend some action be taken. Appeals officers also represent MSD at SSAA hearings.

Student Allowance Appeal Authority (SAAA)

Students can seek a review of any decision regarding their entitlement to a student allowance. Some decisions are reviewed internally and others go through a statutory review process.

If a student is unhappy with the outcome of a statutory review, they can appeal that decision to the Student Allowance Appeal Authority (SAAA), an independent tribunal administered by the Ministry of Justice.

When the SAAA receives an appeal, it asks MSD to prepare a report detailing the matters considered in reaching the decision. Appeals officers complete these reports on behalf of StudyLink, Data Match or Benefit Integrity Services.

In the course of preparing MSD's case, appeals officers contact frontline staff for more information, or to recommend some action be taken. A student must write to MSD within three months of receiving notification of the original decision, to request a review of that decision. There is discretion to accept reviews lodged outside the normal three month time limit if it is considered that there was good reason for the delay.

Types of student reviews

There are two different types of reviews:

- an administrative review
- a statutory review

StudyLink determines which process your case will follow.

Test Your Knowledge

Congratulations on completing the reviews and appeals module!

For course sign off, please answer the follow questions;

1. Explain what a person can do if they disagree with a decision you have made about their benefit payments.
2. What is the process when the review of decision is received 2 years after the decision was made?
3. What would change in the process if the ROD is received more than 7 years after the original decision was made?
4. Who is involved in the review process?
5. Tell me about the process that you need to follow for a person who is being prosecuted, and has also put in a review of the decision?

Risk Management

Learning objectives:

By the end of this unit you will be able to:

- Identify risk, and know how to manage it
- Understand the risk reporting process
- Determine the appropriate level of risk
- Know what to consider before going off-site
- Respond to threats of self-harm/suicide

Relevance of learning to your role:

- Mitigating risk in everything you do to ensure MSD's objectives are met
- Keeping yourself, your client and MSD safe
- Knowing how to appropriately manage risks associated with people involved in an investigation

Behavioural competencies for success:

- Accountability and responsibility
- Decisive – sound judgment
- Take initiative – constantly re-evaluating the situation
- Critical thinking – looking at the big picture
- Empathy

RISK at MSD

What exactly is risk?

Risk is described as "the effect of uncertainty on objectives". What this means is that there may be things that if they happened, would stop you from achieving your objectives, and in turn could impact on MSD's objectives.

Where is risk?

Risk is potentially everywhere. It's present in everything we do and is a natural consequence of a changing environment. Change presents us with opportunities to do new things, or to do things in a way that will drive improved performance.

There is always an element of risk when managing new or significant projects, because it involves changes to processes, and most importantly, changes that will more than likely impact on our clients. Risks can also arise in our business as usual work.

Why do we manage risk?

We manage risks to ensure MSD achieves its objectives and helps New Zealanders to help themselves to be safe, strong and independent.

Managing risk makes us more likely to meet MSD's objectives, whether it's:

- in our everyday processes, so we can ensure effective service delivery
- when we're working through change, so we can achieve the right balance between opportunities to do things better, and managing any risks that go with them.

To manage risk we need quality information to make good decisions.

The importance of quality information to manage risks

The key to good judgment and good decisions is to ensure you have obtained quality information. This can come from a variety of sources such as any prior learning from similar experience; our planning for the future, challenging assumptions and robust analysis; MSD's policies, processes, procedures; advice from your manager and/or discussions with your colleagues.

It is important that we challenge our assumptions about the information we are using as a basis for decision making. For example, not assuming that just because that is the way it has always been done it is the most effective/efficient way.

It is also very important that we understand our risk profile; the type of risks we have and what we are doing about them.

Summary

With MSD's risk management approach, all you need to remember is MSD Risk:

Make decisions based on good information
e**S**calate risks when in doubt
Do things better; look for opportunities
Responsibility for risk; all own what we all do
Integrate risk into everything we do
Seek advice from others, talk openly about risk
Know and understand our risk management approach

Managing Risk in Fraud

Risk Guidelines

These guidelines provide the minimum standard expected of Fraud Intervention Services (FIS) staff to document risk during the fraud investigation process.

When should I document risk?

All risks identified during the investigation process must be documented. If no risks are identified this must also be documented.

A risk is defined as something that may happen but hasn't yet, which could have an effect on MSD achieving its objectives. Examples of risks during the investigation process may include:

Vulnerable client:

- danger to children
- family violence issues
- self-harm / suicidal tendencies
- mental illness or disorder
- addictions or dependencies including drugs, alcohol or gambling
- terminal illness

Risk to MSD:

- significant fraud or deception
- high profile person involved
- threats to go to the Media/MP
- staff involvement
- privacy breach

Personal Safety Concerns:

- clients with known violent or threatening behaviour
- clients known to possess weapons
- gang affiliations
- trespassed clients
- witness intimidation

If in doubt, immediately discuss with your manager. Never assume that a potential risk will not develop into an issue. You must let your manager know of all potential risks.

How should risk be documented?

Every case must have a risk assessment. All risks must be documented in the Investigation Management System (IMS). If no risks are identified this should be noted in risk assessment and the case appreciation and/or investigation plan.

FIS staff should first update the Risk Tab in IMS as soon as a case is assigned to them. The Risk Tab should also be updated if/when further risks are identified during the course of the investigation.

FIS staff should also document all risk information in the IMS note type "Caution" and subtype "Risk Assessment". Ensure that the note is marked "important". This IMS note has prompts to help you.

What information should be included in a risk assessment?

The minimum amount of information required in a risk assessment as per the template includes:

- Date of the risk assessment
- Type of risk(s) identified
- Details of the risk(s) identified – Client
- Details of the risk(s) identified – Staff member or Ministry
- Operational actions/mitigations *(Refer to the Risk Triggers)*
- Risk Rating *(Refer to the Risk Priority Ranking Matrix)*
- Who has the risk been escalated to? *(Refer to the Risk Action Table / Escalation Process below)*

- Next steps

Click here to view the - Risk Action Table

Risk assessments that have been assessed as "Low risk" or higher must be tasked in IMS to the Manager, FIS.

Once the FIS Manager has read the risk assessment the task will be reassigned back to the Fraud Investigator/Technical Officer who then completes the task.

A history of the completed tasks in IMS can be referred to if necessary by opening the "completed task" tab on the bottom of the IMS notes.

Offsite safety and security guidelines

Staff have the responsibility for the on-going assessment of the off-site environment in which they are working and for making appropriate decisions to keep themselves safe in those environments.

Click link to read policy in full: MSD offsite safety and security

When should a safety planning template be completed?

You are required to complete a safety planning template for any off-site activity you undertake. These include:

- client interviews/witness interviews in their own home
- community inquiries in neighbourhoods – this includes professional witnesses, eg. Employers, property managers etc.
- serving of clients summons at their home address or place of employment

You should complete the safety planning template on the first occasion you undertake an activity and then update it only if there is any change from the previous assessment (to site, participants & activity).

Click link to view safety planning template - Safety planning template

When is manager approval required for the safety planning template?

You must get manager sign-off for your safety planning template for any 'Elevated', 'Heightened' personal offsite safety assessments. Possible "Red Flag" situations include:

- History of violence

- Drugs
- Mental health concerns
- History of Firearms use

If your personal offsite safety assessment is 'Elevated' or 'Heightened' you must get manager approval. This will either be your FIS Manager or your National Manager Fraud.

You must not carry out an offsite visit if your personal offsite safety assessment is 'Prohibited'. Red flags generally result in a 'Prohibited' assessment rating.

No approval required	
Normal	
Precautionary	

Manager approval required	
Elevated	
Heightened	

What should I do with the safety planning template once it is completed (and approved if required)?

Save the template so that you can use it again if you need to. Then add the template to an appointment in Outlook. The appointment must cover the full period of time you are away from the office, including travel time.

Ensure that your manager has access to your outlook calendar so they know where you are and how to find you. You can mark any private calendar appointments as private to prevent them from seeing them.

Suicide Awareness

Suicide awareness is about knowing how to respond to people who threaten self-harm. Every year, around 500 New Zealanders die by suicide, with many more attempting suicide. Suicide is the third leading cause of death among young people.

What to do when a client threatens to self-harm

In Person - When a client threatens or talks about harming themselves, do the following:

- Advise your manager **immediately**
- Contact the Police – (Dial 111, the Police will assess the threat)

- Record the Police event number – The Police will provide you with a number, write this down so it can be added to STAR [formally known as SOSHI] later)
- If the client is from another site – email that site's manager and let them know what action has been taken
- Record the details in STAR as a Security Incident including the advice to the site from the Police. Here is how to record the incident in STAR:
    - Nature of Incident: Threats - Self Harm
    - Actions Taken: Incident referred to the Police and any other actions taken. Record the Police event number and site(s) that were advised.
    - Place a note on the clients CMS record.

Over the Phone - There may be times where you receive a call from person who threatens self-harm or the harm of others. In this situation, please do the following:

- if the client becomes emotional and threatens to harm themselves, listen to the threat and try to reassure them
- if they want to talk - listen. Don't be judgemental or criticise how / what they are feeling
- say things like; "I can hear you are very distressed" or "I appreciate how difficult it is for you"
- talk to the caller about other services available to them; friends or family, Lifeline (0800 543 354) or Samaritans (0800 726 666). i.e. "I understand what you are saying and know of help available. Do you have a family member or friend you can speak to? If not, can I give you the number of Lifeline or Samaritans?"

Following the end of the call

- alert your manager and ask them to notify the Police - it is standard MSD practice to make a report of threatened self-harm to the Police so they can complete a wellness check on the person at their home.
- put everything the caller says in writing and note any background noises
- find out where the caller is now
- see if there is anyone with them who can provide support
- ask them if they have taken any medication or are injured, or have been drinking
- keep on the phone for as long as possible or until a support person or Police arrive at the location
- Record the details in STAR as a Security Incident including the advice to the site from the Police. Here is how to record the incident in STAR:
    - Nature of Incident: Threats - Self Harm

- Actions Taken: Incident referred to the Police and any other actions taken. Record the Police event number and site(s) that were advised.
- Place a note on the clients CMS record.

Client Support

In all cases when interviewing a client, you must provide a client support sheet. This sheet contains a community directory that lists support options to assist vulnerable clients.

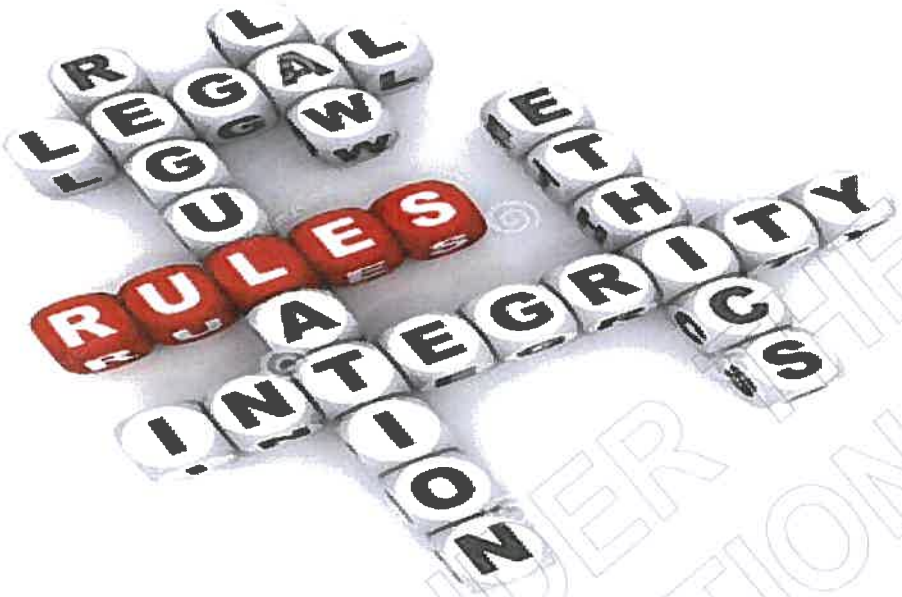
Click link to view this form - Client Support Sheet

Test Your Knowledge

Congratulations on completing the Risk Management module!

For course sign off, please complete the following questions;

1. Read the following scenario and identify any risks you would consider during your investigation.
2. Explain why these are risks, and how you would manage them.
3. Complete an off-site safety report, using the correct template for an interview you are going to attend at an employer work place. (You can make up the details for client and employer).



Rules of Evidence

Learning objectives:

By the end of this unit you will be able to:

- Know what evidence is admissible for a prosecution
- Understand what meets evidential sufficiency standards
- Understand what hearsay evidence is

Relevance of learning to your role:

- When investigating you need to be mindful of what relevant evidence should be collected and can be used if you decide to prosecute

Behavioural competencies for success:

- Critical thinking
- Analytical – attention to detail
- Integrity
- Accountable and responsible
- Professional

Introduction

The Evidence Act 2006 is a set of rules and principles which determines:

- What facts may or may not be proven in a case
- What sort of evidence must be given to prove a fact
- In what manner the evidence must be produced to prove a fact

An investigator must apply these rules when deciding whether a case meets the evidential sufficiency standards to determine whether prosecution action is appropriate.

Fundamental principles

Relevance (Section 7)

All 'relevant' evidence is admissible unless the Evidence Act 2006, or some other Act, says it is not admissible. 'Relevant' means it has the tendency to prove or disprove anything that is of consequence to the judge or jury in making a decision.

General Exclusion (Section 8)

Evidence must be excluded if it fails the test in this section. The test is a balancing process between the **probative** value of the evidence and the risk that the evidence will either be **unfairly prejudicial** or needlessly **prolong** the case.

Probative

Probative value means how helpful the evidence is to the judge or jury in making a decision.

Prejudicial

When is evidence unfairly prejudicial? Almost all evidence that is presented in court by one party is prejudicial to the other party's case. That is the reason to present evidence in the first place.

The issue is when the prejudice becomes unfair. It is not possible to be definitive about when the prejudice is fair or unfair. That will depend on the case and the nature of the evidence.

An example is a client who has previously been convicted of credit card fraud. That conviction is relevant because it would significantly affect the

judge or jury's perception of the client while having nothing to do with the case.

Prolong

Evidence will needlessly prolong the case if it will open up an issue that will take up a significant amount of hearing time, while being of marginal assistance to the judge in making a decision.

If the judge thinks that the probative value will be outweighed by either the unfair prejudice or the risk that the case will be needlessly prolonged, then the evidence must be excluded.

Specific rules

Opinions (Section 23-26)

Witnesses are generally only allowed to say what they saw, heard or did. They are not allowed to state their opinions.

However, there are two exceptions to this rule.

1. A witness is allowed to state their opinion if it's necessary for them to do that in order for the judge to understand what the witness saw, heard or perceived.

   As an example, a witness to a traffic accident is allowed to say what speed they thought a car was travelling. This is an opinion. However, it's necessary to state that opinion if the judge is to understand what the witness saw.

   For the same reason, a witness who has met two people is allowed to say whether they thought they were a couple.

2. An expert witness (for example, an accountant) is allowed to give an opinion so long as the opinion is within the expert's field of expertise.

It's important that evidence collected from a witness during an investigation focuses on the facts that the witness can provide first hand. This would include but is not limited to:

- When they met the person
- How they met
- How long they have known them
- What they saw
- How many times they interacted with the person

- What the suspects did

Once you have established the facts, your witness may offer an opinion about what they thought of the situation. It's pertinent to point out that many people make assumptions with the facts, it's therefore extremely important that your evidence collecting starts with collecting facts before opinion.

Defendant's statements (Section 27-30)

The general rule is that a statement made by a defendant is admissible as evidence in the proceeding.

A statement that has been unfairly obtained may be held to be inadmissible. MSD's standard caution has been designed to meet the obligations of fairness.

Examples of when a statement may not be admissible generally arise from acts of unfairness or unlawfulness. This could include the incorrect use or administration of the caution or unfair duress.

However, the statement is not admissible against any co-defendant in the proceeding. That means in a relationship prosecution where both partners have been charged (and even if you have charged them jointly or as parties to each other's offending), one partner's statement is admissible against that partner only, and the other partner's statement is only admissible against that partner.

Previous consistent statements (Section 35)

A previous statement made by a witness that is consistent with what the witness says in court is not admissible. That is why a witness in court does not produce the statement they gave during the investigation. They have to simply tell their story without referring back to earlier statements they made.

However, previous statements can become admissible in three situations:

1. In the courtroom, the witness can't remember something (and the information is contained in the previous statement)

2. The witness is cross examined by defence counsel and their truthfulness or accuracy is challenged

3. The statement forms an integral part of the events before the Court

Veracity (Section 36-39)

Veracity refers to the witness's honesty.

The prosecution is permitted to produce evidence as to the defendant's veracity in limited circumstances. First, the evidence must be substantially helpful. If that requirement is satisfied, the evidence may be produced if the defendant has offered evidence of their own veracity, or if the defence has challenged the veracity of a prosecution witness by referring to facts that are not connected to the case.

For any other witness, evidence may be produced about their veracity as long as the evidence is substantially helpful.

Propensity (Section 40-43)

Propensity evidence is evidence that a person habitually behaves in a certain way or has a certain state of mind. Before the Evidence Act 2006, this was known as 'similar fact' evidence. The production of propensity evidence in benefit fraud cases has historically been unusual, but in some cases, Judges have allowed the prosecution to produce evidence of previous warnings or benefit fraud prosecutions.

The prosecution can potentially produce propensity evidence if:

- The evidence has probative value
- The probative value relates to an issue in dispute in the case
- The probative value outweighs any unfair prejudicial effect on the defendant

Hearsay rule (sections 16-22)

The hearsay rule (Section 17)

Hearsay is:

- An assertion (written/verbal/conduct)
- Made by somebody who is not the witness
- That is offered in evidence to prove the truth of its contents

In general, evidence that is hearsay is not admissible unless this Act or another Act says it is admissible.

Assertion

An 'assertion' can be defined as a statement that something is true.

Section 4 clarifies that an assertion can be spoken, in writing, or non-verbal conduct such as a nod of the head. So you need to distinguish between statements that are assertions and statements that are not.

> *An example could be derived by imaging that you are at a party!*
>
> *The host introduces you to a man and says "This is Richard". The host is asserting that the man's name is Richard by saying that this is his name.*
>
> *Now – imagine you are observing the host, who is not talking to you at all. You see the man come up to the host, who says "Hi, Richard". In this instance the host is not asserting that the man's name is Richard – he is just greeting him.*

Somebody who is not a witness

This part of the definition is self-explanatory.

In a prosecution the defence has the option of calling no evidence at all, or only calling the defendant as a witness. If the prosecution is not calling a person who has made a helpful statement, then that statement is in danger of being inadmissible.

The rule would occur if a witness gave an investigator a statement but would not or did not appear to give evidence. The investigator is unable to introduce or present 'the helpful statement' during the hearing.

Offered in evidence to prove the truth of its contents

This is about the reason you have for offering the statement as evidence.

Imagine in your investigation you have a partner who has told his employer that he lives at a certain address. This happens to be the same address that the mother of his children has supplied to Work and Income.

- You want the statement by the partner to his employer to be submitted as evidence. Why?
- Because if he gave that address to his employer then it must be true that he lived there.
- Are you offering that statement in evidence to prove the truth of its contents? Yes, you are.

Now, imagine that you're calling the landlord as a witness. The landlord says he spoke to the husband about rent arrears and the husband promised him they would pay $300 by the end of the week.

- Are you offering the husband's promise in evidence to prove the truth of its contents?
- No. It's not important if they were going to pay $300 by the end of the week or not. What is important is that the husband was speaking to the landlord about the rent for the house, and that the husband was presenting as taking joint responsibility for the payment.

So – as previously stated – 'hearsay evidence' is generally not admissible. However, there are some general exceptions to the 'hearsay rule'.

The general exception to the hearsay rule (Section 18)

Hearsay evidence, (despite section 17), is admissible if the following factors are present:

a) The circumstances relating to the statement provide reasonable assurance that the statement is reliable (e.g. it is a formal signed statement to an investigator), and
b) Either
   I. The maker of the statement is unavailable as a witness; or
   II. The judge considers that undue expense or delay would be caused if the maker of the statement was required to be a witness

Witness is unavailable

Someone is only 'unavailable' if they meet the definition of that word in Section 16. A person is 'unavailable' only if they are:

- Dead, or
- Outside New Zealand and it isn't reasonably practicable for them to be a witness
- Unfit due to their age, physical condition or mental condition (medical evidence would be required)
- Unable to be identified or found (evidence of reasonable efforts would be required)
- Not legally compellable as a witness (very unusual)

The business record exception to the hearsay rule (Section 19)

'Business record' is defined very widely in section 16.

A 'business' is any business, profession, trade, manufacture, occupation, or calling, and includes the activities of any department of State, local authority, public body, body corporate, organisation or society.

A 'business record' is a document made in the course of a business from information supplied by a person who had or who may be reasonably supposed to have had personal knowledge of the matters dealt with.

Business records are full of hearsay evidence. For example, a power company's diary notes can contain pages and pages of notes made of telephone contact with the customer. The notes will have been made by numerous staff members.

If the hearsay rule applied to such records that would mean each staff member would have to be called as a witness. The business record exception effectively means that one staff member of the power company can give evidence of all the notes.

However, it's important to recognise what the business records exception can achieve and what it can't:

- It's designed to enable business records to be produced without needing to bring numerous witnesses to court who will probably have no recollection of the records that they made.
- It isn't designed to take evidence that was originally inadmissible (for example because it was prejudicial, or an opinion, or hearsay) and to make it admissible simply because it's preserved in a business record.

To illustrate, take the earlier example of the partner who has told his employer that he lives at a certain address. The employer has got the partner to fill out a form with his personal details. A staff member of the employer (staff member A) has then entered those details onto the employer's computer system.

If the original form hasn't been destroyed, could it be produced as evidence?

This question is answered by checking the definition of hearsay:

- Is the statement an assertion? Yes, the partner is saying 'my address is blah, blah'.
- Is the statement made by somebody who is not a witness? This depends on the case, but presumes the partner is not a witness.
- Is the statement offered in evidence to prove the truth of its contents? Yes, the purpose of producing it would be to have the judge believe that the partner did indeed live at blah blah address.

All the requirements of hearsay are met; therefore the original form would be inadmissible.

- If the original form has been destroyed, logically should the computer note be able to be produced in evidence? Clearly, it would make no sense for the computer note to be admissible when the original form was not.

However, imagine that the original form would have been admissible for the same reason – perhaps because the defence has made it clear that the partner will be called as a defence witness. But staff member A, who made the computer note, has left. The hearsay rule would mean that a current staff member (staff member B) could not produce the note. The business record exception would allow staff member B to produce the note. That is the purpose of the business record exception.

Section 19 says that hearsay statements contained in business records are admissible in three situations:

a) The person who supplied the information is 'unavailable' (see the definition of 'unavailable' in section 16)
b) The judge considers that no useful purpose would be served by requiring that person to be a witness
c) The judge considers that undue expense or delay would be caused by requiring that person to be a witness

Hearsay notices (Section 22)

In a criminal case, if any party wishes to produce hearsay evidence (and MSD often does), then that party must serve on the other parties a formal notice stating what hearsay evidence will be produced, and how it is admissible.

The notice must state (depending on which exception applies):

- The intention to offer the hearsay statement in evidence
- The name of the maker of the statement if known
- The contents of the statement, if made orally
- The circumstances relating to the statement providing reasonable assurance it is reliable
- Why the document is a business record
- Why the person is unavailable as a witness
- Why there would be no useful purpose in requiring the person to be a witness
- Why undue expense or delay would be caused if the person had to be a witness.

Presently, it's the responsibility of Legal Services to prepare hearsay notices. However, the relevant solicitor is reliant on the investigator to provide the information required.

Trial process

Who to call as witnesses

The first step is to check what charges have been filed, and the wording of each charge, to ensure that you are producing evidence for everything you need to prove.

External witnesses

All people who have made statements that tend to prove your case need to be called as witnesses. Their earlier statements are not able to be produced by the investigator (because of the hearsay rule).

Internal witnesses

In many cases a client may have interacted with numerous MSD staff members. It is not always necessary to call every person they have had interaction with. The evidence to be produced by MSD can sometimes be given by one or two witnesses, depending on the nature of the evidence.

In most cases all of MSD evidence might be given by one case manager. Some exceptions to this would apply:

- If the investigator was recently a case manager, then the investigator may be able to give all MSD evidence.
- If the records show a particularly important interaction between the client and particular case manager(s), then it's advisable to call those case manager(s) as well
- If some evidence is specialist in nature, such as the date matching process, you will need to call a person who works in that area
- If the evidence relates to a particular and specialist piece of work, such as the results of a phone call search, the person who did the search will need to be called

At all times, ask yourself whether your witness will be able to answer questions about the evidence they are giving. If possible, call the person(s) who actually dealt with the client's affairs. If in doubt, seek legal advice.

Evidence from finance companies, hospitals, power companies and so on can hopefully all be presented by one witness from each institution.

Admission by consent (Section 9)

The judge can admit any evidence that all the parties agree can be admitted.

That means that if all the parties agree, evidence can be admitted that:

- Is not admissible, or
- Is not in an admissible form

It's this section that makes it possible for witness's briefs to be handed up instead of the witness having to be there. This is normally agreed to between the prosecutor and the defence solicitor prior to the hearing.

Best evidence

It used to be that the best evidence had to be presented otherwise it could not be admissible. For example, the original of a tenancy agreement had to be produced, not a copy. The best evidence rule has not been carried forward into the Evidence Act 2006.

Now it's more likely that all relevant evidence will be admitted, though the weight attached to it will vary accordingly to the type of evidence. Generally the production of copies of documents will be allowed if the originals are lost, or destroyed.

However, it cannot be assumed that this will happen, and you can expect judges to become grumpy if a case involves the production of lots of photocopied documents with there being no indication of efforts having been made to obtain the originals. You should always endeavour to obtain the originals of exhibits, and if copies need to be produced, the brief of the witness should say what has happened to the original.

Producing a document without a witness (Section 130)

It is possible to produce a document without having to bring a witness to court to produce the document. The party wishing to do this needs to serve the other parties with notice of their intention to do that, and the other parties can formally object.

This procedure is useful for a document that speaks for itself, where there is no need for a witness to provide any explanation for it, such as bank statements.

The document must be otherwise admissible. That means it must not contain hearsay, opinions, previous consistent statements and so on.

Public documents (Section 138)

A public document obtained by MSD can be produced as an exhibit by the investigator.

The definition of "public document" is very wide, and amounts to any document held by the government or a public body. However it must be officially sealed or stamped or it can be a certified copy.

Witness referring to documents (Section 90)

When you are talking to your witnesses about what to expect at the hearing, it is important to make them aware of the rule in section 90.

The rule is that a witness (when they are in the witness box) cannot look at any document unless the judge grants permission. The legal term for permission is "leave".

Section 90 clarifies that a witness can look at a document to refresh his or her memory, if the document was made when their memory was fresh. However even in that situation, the judge still needs to grant leave.

Because of this rule, witnesses should be encouraged to familiarize themselves with any documentary records they have before they enter the courtroom.

It is reasonably common for witnesses to give their evidence by reading from a brief of evidence, and then being cross examined. However that process can only be followed when the defence consents to it under section 9. Until that consent is given, you and the witness must assume that they will have to give evidence according to the rules.

Now you have completed this module, an assessment of your knowledge is required.

For course sign off please complete the following questions,

1. Explain the importance of collecting information legally.
2. Explain how you determine if a witness is giving their account of what they have seen/heard or if they are providing a hearsay statement.