

# Developing an effective case theory

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## What is involved

Your case theory helps structure your arguments and how you present your client's case. It keeps you on track like a road map for the whole hearing or trial. It should advance the most logical and plausible explanation of your client's case, based on their instructions, and is why it should succeed.

Developing a logical and effective case theory requires advanced skills of analysis and critical thinking. These can be difficult to master in any case but especially challenging if it involves:

- a lot of evidence
- complex issues of evidence, law or procedure
- gaps in the evidence
- a particularly contentious or longstanding dispute
- instructions which are difficult because, for example, they lack clarity.

## Your obligations

Developing a logical case theory is a requirement of our [Statement of standards for solicitor higher court advocates](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/accreditation/higher-rights-of-audience/statement-of-standards-for-solicitor-higher-court-advocates/) and a useful practice for all advocates. It can help you meet some of the requirements of our Competence Statement including but not limited to:

- [A4 Draw on a sufficient detailed knowledge and understanding of their field\(s\) of work and role in order to practise effectively.](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a4)
- [A5 Apply understanding, critical thinking and analysis to solve problems.](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#a5)
- [B1 Obtain relevant facts.](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b1)
- [B2 Undertake legal research.](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b2)
- [B3 Develop and advise on relevant options, strategies and solutions.](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b3)
- [B5 Undertake effective written and spoken advocacy.](https://higher-rights.sra.org.uk/solicitors/resources-archived/continuing-competence/cpd/competence-statement/#b5)



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## **Questions to help prepare your case theory**

These questions will help you prepare your case theory:

- What are your client's objectives?
- What decision or order are you asking for?
- What law and legal practice is relevant to your case?
- What is the evidence supporting and undermining your client's case?
- What is the evidence supporting and undermining the case of the other side?
- What facts or issues do you need to try to prove and what facts or issues do you need to try to disprove?
- What are the facts or issues which the parties have agreed?
- What witnesses do you need to call to support your case and/or challenge the case of the other side?
- Are there any evidence gaps or issues of admissibility? If there are evidence gaps can you do anything to fill them?
- What points are not relevant or important to your case? Putting minor points to the court could create the perception that your case is weaker than it actually is.
- What themes do you want to bring out in your advocacy? For example, if you were seeking a care order, the themes for your advocacy could be domestic abuse, drug use and refusal to cooperate with professionals.

### **Top tip**

Feedback from other advocates can improve your case theory, particularly if you are instructed in a complex case or in an area where you have less experience. Although you can't share anything confidential or privileged you can ask questions about the most effective strategy for dealing with a particular issue.

If you are more professionally isolated, say as a sole practitioner or your firm's only advocate, you could ask for feedback through a professional network.

## **How the Crown Prosecution Service approaches case theories**

### **6 steps often used by CPS advocates**

1. Ask 'what is my case?'



2. Identify features in the case that support and challenge your initial theory.
3. Segregate those features into 'fact', evidence, inference and conclusion.
4. Analyse the case more deeply, asking if the features you identified really support or challenge your case.
5. Ask – now what is my case?
6. Look at how you will prove the features that support your case and address those that challenge it.

Steps 1 to 3 comprise your initial case analysis. You then have an initial case theory which should:

- Be simple, easy to believe, logical and based on common sense.
- Be consistent with all undisputed and undeniable facts.
- Be based on credible, admissible evidence and credible, reliable witnesses.
- Ignore 'facts' which can't be established by admissible evidence or proper inference from the evidence (these facts should be investigated further as part of your more detailed examination of the case).
- Address the legal elements of the case that you need to satisfy.
- Identify the information you need to seek to determine the path your case will likely take.

## **Top tip**

A useful method of initial case analysis used by CPS advocates and others is to read your case three times:

- First, to learn what it is about (neutral).
- Second, from your client's perspective.
- Third, from your opponent's perspective.

You can then use a 'good facts, bad facts' approach to identify the strengths and weaknesses of your case. The standard approach is to use three sections or columns:

- Good facts which support your case.
- Bad facts which challenge your case.
- Other information such as irrelevant or neutral facts.

Steps 4 to 6 comprise your deeper case analysis, to realise your case objectives. When completing them, reconsider the papers and ask yourself:

- How you will show your case theory to be correct?
- What is your opponent's case and why is it wrong or not a reasonable alternative to your case?

- If your initial view of the case was accurate as to the impact of the identified features.
- 'Is this really going to support or challenge my case?' If not, 'why not?' This can help identify any outstanding issues.