

*Riskwatch is prepared by Law Claims to assist practitioners in identifying risky areas in practice and to highlight risk prevention strategies to allow for safer, more enjoyable practice. Riskwatch appears as a monthly column in the Law Society Bulletin as well as being distributed on a monthly basis to members of the Law Society's Professional Indemnity Scheme who do not receive the Law Society Bulletin.*

## Advice from practitioners who have had a claim

By Gianna Di Stefano, PII Risk Manager



Practitioners who have had a claim (this includes an actual claim, a threatened claim or circumstances possibly leading to a claim) are in the best position to offer advice about how that claim could have been avoided.

At Law Claims following the completion of every matter a review of each file is conducted and where appropriate, a questionnaire is sent to the insured practitioner with a risk management checklist for the insured's use in assessing risk factors and office procedures in the insured's firm.

The feedback and answers to the questions provided by practitioners are insightful and invaluable in assisting them with their practice management and us with our Risk Management Education Program. We thought you would also find it helpful to learn from their mistakes!

Many of our claims result from failing to manage critical dates or general tardiness with a matter. We also get a significant number of claims from a failure to document the scope of the engagement who exactly you are acting for (husband, wife, company and anyone "listening") and/or record the advice given. Very few claims arise from not knowing the law.

The practitioners who have faced a claim have been asked to consider what the reasons are in their claims to give advice to others and make suggestions of how to avoid a similar claim.

We now provide examples of some of the most common advice provided by practitioners who have completed the questionnaire:

### **Communication**

"Outline in a letter of engagement what the firm will do and what the client's obligations are."

"Never make assumptions."

"Never work with friends – don't do favours."

"Be meticulous in keeping detailed notes of all conversations. If mistakes in drafting are obvious then point them out straight away and ensure that they are corrected. Communicate instructions within the firm in writing and as clearly as possible."

"Be very wary of acting for clients who come to you with a complaint about their former solicitor or wanting to sue their former solicitor: they are invariably trouble."

"Do not accept matters in which there is an urgency that can not be catered for."

"Make the client clearly aware of what you will do (due to time/cost) and what you will not do."

**Settlement Issues**

“Never assume once hard work is done in Court that your battles are over. Never take any client communication for granted.”

“Do not allow yourself to be hurried along by client.”

“Take more time to explain consequences of documents to client.”

“Check precedents for suitability.”

**Legal Error**

“Refuse matters involving other jurisdictions unless certain of applicable law.”

“Don’t practice in an area you don’t know.”

“Always ensure working from correct version of legislation.”

“If you cannot deal with rectifying the mistake hand the file over to someone else immediately and do not procrastinate.”

“That I had acted for both parties and my client would not go elsewhere – not to fall prey to the clients whims or manipulative reasons.”

**File Management**

“Have some double checking process to ensure limitation date is entered into computer system and in solicitor’s diary.”

“Make sure you have a very comprehensive diary system in place.”

“Ensure system does not leave practitioner exposed. Ensure system is understood by all who have responsibility for the file.”

“Make sure your system has double checks to account for human error.”

“Ensure junior staff maintain accountability to supervising solicitor and ensure adequate supervisory checks are in place.”

“Check and double check (and triple check) limitation dates.”

“Not to bury their head in the sand like an ostrich and hope that everything will be alright.”

“Check every file if a lawyer leaves.”

“Keep adequate call-up systems for all infant claims.”

“Get will draft signed at time of taking instructions even if instructions not complete.”

**Cost Issues**

“Always get money in trust before undertaking any work on a file.”

“Send frequent accounts, not just cost advice letters. Try not to take it personally and remain civil with other side’s solicitors.”

“Never do anything for nothing. They will never appreciate and if it does not go their way it is your fault. From nothing you will get nothing.”

“Ensure that signed cost agreement letters are returned by the client.”

“No matter how pressing the matter from the client’s point of view and how sympathetic this makes you feel for their plight, even in matters of the highest urgency, never act without funds in trust.”

You may be able to relate to many of the above comments made from practitioners who have had a ‘close miss’ or a claim.

If you require further advice regarding how to avoid claims or risk management resources feel free to contact any of the three solicitors at Law Claims.

**For any queries about this, or other Risk Management Services offered by Law Claims, please contact the PII Risk Manager, Gianna Di Stefano on 8410 7677.**