



BENEFIT OF HINDSIGHT FEBRUARY 2014

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When a claim is finalised, Law Claims asks the insured practitioner to complete a questionnaire which provides us with valuable feedback about many issues.

"...do not rely on the skill of another, no matter how senior or experienced he or she might be."

The questionnaire focuses the insured practitioner's thoughts on important risk management questions relating to the specific claim or potential claim made by the claimant. Practitioners' answers often fall into similar categories and we believe that they are worth sharing with you. Set out below are some of the responses we have received in those completed questionnaires:

Q: What contributed to the claim?

- "Client unhappy about the account."
- "Confusion about who was responsible."
- "No checking of document."
- "Failure to obtain medical opinion regarding the mental capacity of an elderly client as a precaution."
- "Unexpected illness of insured – long period off work."
- "Insured failed to take note of 6 month time frame for claim."
- "Inexperience at the commencement of the matter."
- "Client expectation not managed appropriately."
- "Should have obtained more comprehensive instructions from client and should have involved counsel at the outset."
- "Acting for a difficult client who had 2 previous solicitors acting for him in difficult litigation."

- "Failure to record in writing in detail and frequency the advice given and instructions received."
- "Busy period prior to annual leave. Left documents for admin staff to post, they did not. When lodged it was too late."
- "Clerical error and failure to diarise properly due to new staff performing tasks."
- "Deficiencies in systems recording and reminding practitioners of limitation dates and limited supervision."
- "Client gave information which was incorrect. Title search would have clarified."



Q: What advice would you give others?

- "If you are inexperienced in a particular area of law refer the matter on."
- "If in doubt re: mental capacity get a medical opinion."
- "Avoid doing legal favours for friends or at least be extra cautious."
- "Be honest and objective."

- *"Do not approach any problem lightly or without due regard to the consequences to the client."*
- *"Check and recheck – never make assumptions."*
- *"Exercise caution in connection with instructions via an agent."*
- *"Ensure diary notes are entered and checked."*
- *"Record everything in writing."*
- *"Clearly delineate the party for whom a solicitor acts."*
- *"When on leave arrangements must be made for someone else to review incoming mail."*
- *"Don't delay when the time limit is approaching."*
- *"Carefully check all documentation before it leaves the office. Do not rely on the skill of another, no matter how senior and experienced he or she might be."*
- *"Choose your clients carefully."*
- *"Take counsel's advice if beyond expertise levels and experience."*
- *"Don't delegate without active supervision."*
- *"Upon drafting a document undertake a thorough review of all the provisions and assess those terms against the instructions given and to commercial objectives of the parties."*
- *"Don't give legal advice via a third party. Treat anyone wanting information as a client."*
- *"Listen to the client and pay attention to what they are doing. Take and maintain proper control of the file (and client)."*
- *"Take full instructions at the commencement of acting. Supervise any/all transfers of files."*
- *"Ensure all data entry is double checked in relation to dates for time limits."*
- *"Letter to non-clients to clarify the parties the firm is acting for."*
- *"Expiry dates on current files have been entered in computer system and personal diary with warnings leading up pending expiry date."*
- *"More detailed retainer agreements provided to client. Better communication (written) to clients especially by email."*
- *"Confirming instructions in writing."*
- *"Requiring substantial money in trust before action commences as a sign of client's bona fides."*
- *"Put the advice in written format, even for a client who closely understood the advice that was offered."*
- *"Diarisation of whether we have heard back from client or not."*
- *"Make sure juniors are better supervised."*
- *"Greater supervision even if practitioner is experienced."*
- *"Do not procrastinate. Keep client apprised of situation."*

Q: Any other comments

- *"Case and subsequent claim present a stark reminder to me not to be too enthusiastic about any clients' claims and to be more ruthless in dealings with them by insisting on written instructions and money in trust."*
- *"Wanting to help clients can lead to problems. Need for proper advice and confirmation."*
- *"A more thorough/critical attitude to 'vetting' a client before agreeing to act."*
- *"In my matter, the client retrospectively took a view that he had not received proper advice, just as a ruse to avoid paying his costs. Had my notes been a little better he wouldn't have been able to get away with it!"*
- *Delegation issue. I would have picked the issue. The paralegal concerned didn't, despite training. It was really a case of cost saving, corners being cut = problem."*

Q: What steps have been taken to avoid a similar claim

- *"I have undertaken not to perform further work for friends unless the matter is properly opened and managed through my firm. I have also undertaken not to perform work that is outside the scope of my experience."*

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