

Time might not be on your side

GRANT FEARY, DEPUTY DIRECTOR, LAW CLAIMS

On page 28 of the 2016/17 Law Society Annual Report, the Director of Law Claims noted:

"It is disappointing that notifications with respect to the failure to issue proceedings in time for motor vehicle accident personal injury claims continue to occur. The total of the amounts paid for [settlements of out of time MVA claims] account for nearly one-third of the payments made during the 2016/17 period".

Claims based on missing a time limitation continue to be the single greatest cause of claims against practitioners, in particular with respect to issuing proceedings in motor vehicle accidents matters. Of course, time limitation problems occur across many different practice areas.

This will not, or at least should not, be news to any practitioner. Adherence to applicable time limits is one of the most important aspects of legal practice, not least because a higher excess of twice the normal excess is payable in respect of a claim made on the PII Scheme arising from the missing of a time limitation.

So, we all know the problem, but what is the solution? What can be done to avoid or minimise the risks of a claim against your practice with respect to missing a time limit?

The four steps set out below are simple measures which every practice, no matter how large or small, can and should adopt:

1. Research, define and identify all of the different types of key dates which might be applicable to the different types of work undertaken by your practice. A useful tool in this regard is the Limitation Schedule (recently updated) which is available on the Law Society website.
2. Establish a procedure to identify key dates relevant to each file as early as possible after taking instructions. This procedure should involve a consistent approach to the recording of key information for each file so there is no room for errors arising from idiosyncratic recording of information.



3. Have a three point recording system, for example:

- The individual matter file. Record key dates clearly and legibly on and in the file.
- A central diary system. Record all key dates from all files in a consistent manner and monitor this diary regularly.
- Individual diaries. Whether these diaries are hard-copy or electronic, the diaries of each individual practitioner should be accessible by others within the practice and should be maintained clearly and also regularly monitored.

It is important for a three-point recording system to be used and regularly monitored to minimise the risk of the entry of an incorrect date in one arm of the system. Some electronic systems feature tools that allow you to review and check data which will help identify potential problems, and errors and send automated reminders of approaching key dates. When entering the time for reminders, make sure that enough time is left before the deadline to avoid last minute panic.

Law Claims often sees examples where a practice may have what it thinks is an effective system only to have that system break down. An example of this occurred

recently in a medium size firm that deals extensively in personal injury work and which had a time limitation diary system. A practitioner was on leave when something had to be filed. Insufficient attention was given to handing over the file to another practitioner and the time limitation for issuing proceedings was missed. Make sure your systems overlap and are robust enough to deal with issues such as practitioners being on sick leave or annual leave.

4. Partners and senior staff should lead by example. Obviously, once the practices and procedures with respect to time limitations have been established, all staff need to be trained on how to use them. Partners and senior staff should set an example to others by recording their key information in a consistent manner and by adhering to those practices and procedures themselves at all times.

Time related matters are a constant concern for Law Claims, notwithstanding the focus on such issues and the fact that all practitioners will understand the importance of not missing time limits. Now is the time to check that your systems are effective, robust and, most importantly, properly followed: the best systems in the world are no use unless they are used properly and consistently.