

REASONABLE SUPERVISION: WHAT DOES IT MEAN FOR YOU AND YOUR STAFF?

By Jennifer Baker



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Over the last decade, Lawcover has identified more than 70 claims in which the main cause of loss is identified as 'lack of supervision of staff'. The claims range from alleged frauds in which employees of law practices are directly implicated, to those that have arisen from an inexperienced and unsupervised solicitor being left to flounder – with predictable results.

The Tristan Jepson Memorial Foundation has produced a valuable resource called *Psychological Wellbeing: Best Practice Guidelines for the Legal Profession*, which identifies effective supervision as supportive of mental health, effective leadership and workload management. This finding is as pertinent to the principals of a practice as it is to the rest of the staff in the practice. The welfare of staff cannot be underestimated from a risk management, financial, and ethical stance.

Reasonable supervision

Rule 37 of the *Australian Solicitors Conduct Rules* provides that '[a] solicitor with designated responsibility for a matter must exercise *reasonable supervision* over solicitors and all other employees engaged in the provision of the legal services for that matter'. (emphasis added)

There is, however, no guidance in the Rules in relation to the correct application or interpretation of 'reasonable supervision'. So what does 'reasonable supervision' mean?

Many will have clear memories of the supervision (or perhaps lack thereof) that we encountered when we first started working as solicitors. Almost immediately, it was apparent to all of us young solicitors that whether we would get much of the training and supervision we hoped for would come down to luck. No one wanted to work with the 'scary partner' and, usually, for very good reason.

Thankfully, there were usually rules in place which gave us hope that we would not go too far awry. For example, I was not allowed to sign my own mail. In fact, outgoing mail would be placed

Snapshot

- Insufficient supervision of staff is a significant generator of Lawcover claims.
- Reasonable supervision of staff is a requirement under the *Australian Solicitors' Conduct Rules*.
- The supervision required varies according to the employees' experience, qualifications and role, and the type and complexity of work.

in a folder, bearing my initials, for the supervising partner to sign, amend and/or discuss with me. Similarly, incoming letters would also be distributed via the supervising partner and never came to a young solicitor directly. We knew we could seek help from those more senior solicitors down the corridor who, for the most part, were only too willing to help. I tagged along with various partners to conferences with clients, witnesses, counsel and opponents. I also tagged along to many mediations and settlement conferences. Those experiences were supervised and invaluable.

When I ask my contemporaries what the term 'reasonable supervision' means, the answers were many and varied. Many firms have different procedures and requirements in place for managing external communications, particularly with regard to email.

The issue of supervision was addressed in *Legal Services Commissioner v Michael Vincent Baker* [2005] LPT 002 at 008. The Tribunal stated that, '[a] practitioner should properly supervise all legal work carried out on their behalf. Vicarious liability aside, a practitioner's legal and fiduciary duties to a client are not avoided or reduced by delivering that client into the care of an employee, whether or not that employee is legally qualified. *The supervision required however varies according to the employees' experience, qualifications and*

role and with the type and complexity of the work.' (emphasis added).

Supervision tips for principals

- Examine the systems and procedures that exist in your practice in relation to your professional obligation to supervise, particularly external communications by mail and email;
- Think about how you communicate with your staff and how that communication could be more effective – there is always room for improvement and new ideas;
- Keep a keen eye on workloads;
- Consider your client, the matter at hand and how that client can best be served;
- Seek feedback from your staff as to your own 'supervision style' and seek suggestions;
- Regularly review files and meet with your staff;
- Supervision is not a 'one size fits all' approach – you should consider the individual, his or her qualifications, experience, personality, and their role in your practice; and
- Make sure that your firm has a system for receiving and dealing with complaints.

Tips for employees

- Do not be afraid to ask for help or seek assistance – in my experience, principals show relief when you do ask questions; and
- Do not be afraid to speak up or seek help when you feel out of your depth.

Conclusion

Finally, I refer you to a recent video podcast produced by the Law Society of NSW, Mandatory Rule 6.1.3 – Supervision of Legal Services, Glenda Carry (March 2016) MIS74/1265, which covers a range of cases concerning supervision, practising certificates, regulation and the conduct rules which are outside the risk management nature of this article. **LSJ**