

It's all in the **detail**



## Retainer, advices and file notes.

A claim against a solicitor has the best chance of being successfully defended if documentary evidence is available to support their defence.

It is therefore not surprising that it's difficult to defend a claim when the file of a solicitor, who is the subject of a claim, is lacking in detail or incomplete. Often the question becomes whether the solicitor's version of events is preferred over that of the client. The solicitor's account of their usual practice, or what they would have done or advised, will have a better chance of being preferred over a client's version of events if the solicitor can produce a complete and orderly file, including details of the retainer, written advices and file notes.

The Court tends to favour the evidence of a claimant to that of a solicitor in circumstances where no clear evidence or documentation is produced from the file. This is because clients, who typically do not receive legal advice every day, are considered likely to remember an unusual interaction with a solicitor.

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Lawcover is often in a position of having to settle claims on a compromised basis, in the absence of clear and concise written advice or file notes, because the solicitor is not able to prove what oral advice was given.

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A recent claim against a solicitor involved an allegation that the solicitor had failed to properly convey to the client, and advise on, a formal settlement offer in a compensation claim. The ultimate outcome of the compensation claim was adverse to the previous offer which had allegedly not been properly explained to the client. The solicitor alleged that the offer had been fully explained to the client in conference but the client disputed the solicitor's version of events. The solicitor's file note was ambiguous and there was no written advice to the client.

Although the legal team was wholly supportive of the solicitor, without the benefit of clear written evidence, the advice provided to Lawcover was that defence of the claim was likely to fail.

Most solicitors agree that the outcome of this claim is unsatisfactory. However, most also acknowledge the need for a practical and compromised resolution given the lack of documentary evidence available from the solicitor's file.

Nearly 10% of Lawcover's claims fall into the category of being unable to be fully defended given the absence of copies of written retainers, advices and file notes. Don't let this happen to you.

Tony Reynolds  
Claims Solicitor

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