

# The connection of clients and claims



## The role of the client in professional negligence claims

With over 30 years of claims experience, Lawcover is an invaluable source of information to aid the profession in preventing professional negligence claims. Claims data, including claims examples and trends, is frequently communicated to law practice principals and staff, along with tips and advice, to help them understand how claims arise and how to best manage risk.

### Claims trends

The most significant cause of a claim is a communications failure between the solicitor and client, accounting for 32% of all claims in the 2019/20 financial year. The most frequent allegations seen under the communication banner, include:

- ▼ Failure to advise
- ▼ The client's instructions were not followed or not obtained
- ▼ Incomplete explanation or failure to properly define the scope of the retainer.

A further 32% of all claims stem from systems problems which include:

- ▼ Delay in the progression of a matter
- ▼ Simple oversight
- ▼ Documentation problems, such as the failure to check the accuracy of documentation.

### What about the client?

Claims are often multifaceted and it is important to consider what role the client may have played in the development of a claim. Certainly, there are some clients who may be described as 'having a sting in the tail' and claims that flow from these 'problem clients' can often be avoided.

Solicitors should hone their skills in identifying, and managing, these "high-risk" clients. This includes both the initial selection of clients, and determining whether instructions to act are accepted or not.

Problem clients may fall within some of the following categories:

- ▼ Dissatisfied client - has had previous solicitors acting in the same matter, with the client now being 'dissatisfied'
- ▼ 'Hands off' client - resists engaging in the matter and wants the solicitor to make all the decisions - "I will just follow whatever your advice is."
- ▼ Unresponsive client - fails to respond to communications, requests for instructions or to meet deadlines
- ▼ Litigious client - has a history of being involved in litigation
- ▼ Favour client - is a friend or relative who wants a favour

- ▼ Non English speaking client - who is translating and how reliable is the translation?
- ▼ Multifaceted client - is involved in a matter which includes several aspects with potentially conflicted interests (e.g. an estate matter where the solicitor is executor).

It is important that solicitors attempt to recognise certain 'types' of clients, including their behaviours and emotions, to assess how this may impact upon management of the solicitor/client relationship and the matter. It is common for a solicitor who is the subject of a claim to say, with the benefit of hindsight, that the client making the claim was 'trouble from the start' or perhaps 'should not have been accepted as a client'. Intuition and careful vetting are important factors in managing the risk of taking on a client in any matter. If high-risk clients can be identified early, and managed accordingly, claims may be avoided.

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