

Allegations of negligent settlement advice



A significant number of claims against litigation solicitors arise when a client, having been advised to accept a settlement, subsequently has a change of heart, believing that they would have done better at trial or could have obtained a better settlement.

Lawcover has had many claims over the years where a client who agreed to settle their original claim has later sought further legal advice and then commenced an action against the original solicitor for recommending an insufficient settlement.

In many of these claims, it is alleged that the solicitor failed to obtain sufficient evidence before recommending settlement, or in some cases, pressured the client to settle against their best interests.

Defending the claim

These types of claims are relatively easy to defend where there is detailed written advice on quantum. Where clients have received recommendations as to an expected range of damages and, a breakdown of various heads of damage, it is difficult to sustain allegations that

settlement advice was inadequate. This type of written advice will also help to defend any subsequent allegation that certain aspects of the claim were overlooked.

Some settlement discussions can occur quickly, particularly during a trial or mediation. While it is best practice to make contemporaneous file notes of advice given to the client in these high-pressure situations, dictating a quick note into your phone can further assist in proving that offers were passed on and advice provided.

It is easy to be wise after the event and many litigation clients later make claims alleging that the solicitor:

- ❖ Failed to pass on an offer of settlement that the client would have accepted
- ❖ Failed to act in accordance with instructions to accept an offer
- ❖ Failed to adequately document a settlement that had been reached.

Claims prevention tips

- ❖ In complex cases, a table showing the likely minimum and maximum awards for each head of damage will allow the client to understand the calculations. This can also be relied upon if a claim is made at a later date to show that proper consideration was given to all issues.

- ❖ Where possible, seek counsel's advice as to a suitable settlement range but keep in mind that the ultimate decision is the client's.
- ❖ Where an offer is made and rejected, either on or against your advice, confirm these instructions and the advice provided in writing.
- ❖ Regardless of whether you consider that an offer ought to be accepted, it must be communicated to the client and their instructions sought.
- ❖ Even the most rudimentary file note recording the passing on of an offer will assist in defending a later claim.
- ❖ Advise your client about the progress of a hearing and make settlement recommendations, where appropriate.

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