

# Check, check and then check again: Drafting errors resulting in claims against solicitors

For many solicitors, the drafting of documents is a daily task. Despite being a routine part of professional practice, and perhaps because the task is often so routine, mistakes in drafting can sometimes occur. During 2020/21, approximately 17% of all professional indemnity claims received by Lawcover arose from errors in documentation.

## Claims examples

In a recent claim, a solicitor was instructed to prepare a will for a client. He met the client in conference and took notes of her instructions. Following the conference, the solicitor verbally instructed an administrative assistant to prepare a draft will and was provided with the notes the solicitor had taken in the conference. Unfortunately, when reviewing the will, the solicitor failed to identify that a cross reference to another clause had been omitted. The error created uncertainty as to how the client's estate was to be disposed following her passing. A claim against the solicitor was pursued for the costs of rectification of the will.

In another claim, clients purchasing a property instructed their solicitor that they required an extended settlement date so that the sale of their current home could be completed, the funds from which were being used to finance their purchase of the new property. Negotiations regarding the purchase and the contract terms occurred quickly over the course of just a few hours. The solicitor intended to draft a delayed settlement clause in terms which gave her purchaser clients the right to nominate an earlier completion date if they chose but, inadvertently, drafted the clause in terms which gave the vendors the option to move completion forward. The vendors agreed to the inclusion of the special condition as drafted and the contract was exchanged unconditionally. Six weeks later, the vendors exercised their rights under the special condition to require an early settlement at a time when the clients' sale had not been finalised. A claim against the solicitor was pursued for, amongst other things, the costs incurred by the clients in obtaining bridging finance to complete the purchase of the new property.

## Risk Management Tips

Drafting errors can happen in any practice. The sheer volume of drafting undertaken by some solicitors increases the chance of a drafting error occurring. However, the risk of drafting errors can be reduced by consistently implementing some simple risk management practices:

- ▼ Take the time to carefully review all documents, even where there are time pressures
- ▼ Where possible, have documents double-checked by another solicitor within your office who has knowledge of the matter
- ▼ Methodically review all documents for inconsistent terminology and incorrect clause numbering or cross referencing
- ▼ Avoid adapting documents from other files. Start each document afresh from a master precedent
- ▼ Regularly update precedents and pro-forma templates to ensure that they reflect the most current legislative and regulatory requirements
- ▼ Ask your client to carefully review all documents to satisfy themselves that they are in accordance with their instructions.

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