

## What does success look like to you?

Why asking the right questions can help avoid the number one cause of professional negligence claims against solicitors.

Lawcover's annual data on the causes of professional negligence claims against solicitors reveals that failure to communicate tops the list at 36%. This has been a common trend for several years.

On a more granular level claims arising from a failure to communicate include allegations of failure to advise or allegations of incomplete explanation, retainer or advice.

A recent Lawcover claim provides a useful illustration. In this claim the solicitor acted for the purchasers of residential property in a strata development. In conversation with the solicitor, the purchasers mentioned that they intended to use the apartment for short-term letting. The solicitor provided general advice to the purchasers to read the bylaws attached to the contract for sale but did not specifically query the purchasers

on their intended use of the property and did not advise of the need to clarify that nothing in the bylaws prevented the purchasers from operating the property as intended including short-term lettings.

Following settlement the purchasers were advised by the body corporate that short-term lettings of any apartment in the development was prohibited. The purchasers claimed that the solicitor ought to have advised them that their intended use of the property was not permissible and the general advice to read the bylaws was not sufficient in the circumstances.

An episode of Lawcover's [Short Minutes – "Making Assumptions"](#) details another recent claim arising from allegations of failure to understand client objectives.



Glenda Carry  
Legal Risk Manager

### Tips to manage the risks

Asking open ended questions is an effective communications tool. Client responses to questions like **'What does success look like to you?'** will help you gain a clearer understanding of your client's objectives, identify pain points you may not otherwise know, better manage client expectations and provide tailored legal advice.

A useful tip to promote communication including understanding client objectives is to include the use of open-ended questions (tailored to each matter area) as part of your client onboarding checklist.