Causes of claims and the importance of risk management

A professional negligence claim can have both financial and reputational implications for the solicitor and the practice.

Understanding the causes of claims is the first step to implementing strategies in everyday practice to help manage the risk of claims occurring.

The top three

1. Poor Communication

The importance of effective communication is the cornerstone of a successful legal practice. As the leading cause of claims against solicitors, poor communication includes:

- Client instructions not followed
- Failure to advise
- Failure to manage expectations
- Failure to define the extent of the retainer
- Failure to obtain clear instructions
- Incomplete explanation of advice

These risks can be managed by implementing some general measures, tailored to suit the solicitor, client and practice.

Risk management tips

- Keep the three Cs front of mind throughout a matter – client, communication and clarity
- Maintain a complete and detailed file. Ensure your communications with the client, including emails, verbal communications, meetings etc, are well documented with detailed contemporaneous file notes taken and placed on the file
- Include the use of open-ended questions as part of your client onboarding checklist to gain a clearer understanding of your client's objectives (e.g. 'What does success look like to you?')
- Provide your advice in writing and ensure that the client understands the practical implications of this advice.

2. Document problems

Competing priorities, time pressures and client demands may impact accuracy. Claims arising from document problems are often due to drafting errors or failure to review or check documentation. These claims can often be prevented by taking some simple, but key actions:

- Use a comparison software tool to highlight differences or inaccuracies between documents, and assist in flagging any new changes

- Assign document access or permissions to prevent accidental or unauthorised access or editing

- Proof reading and review – have a colleague look over the document for inconsistencies and inaccuracies

- Start each document afresh from a master precedent and ensure these are updated regularly to reflect the most current legislative and regulatory requirements.

3. Systems problems

The systems and processes in place within the practice are integral to risk management. If no system exists, or if they are inadequate or compromised, then mistakes will inevitably occur. It's not surprising then, that systems problems, which include ineffective management of critical dates, lack of file maintenance, lack of supervision and cyber breach, give rise to a large portion of claims against solicitors.

Steps can be taken to prevent issues arising:

- Avoid delay and ineffective management of critical dates – identify and diarise critical dates early and often, using one diary system, and conduct regular file reviews to ensure critical dates are not missed. Pay close attention to managing expectations with clients about why critical dates are important

Causes of professional negligence claims and implementing risk management

- Prioritise file maintenance and review – use a centralised tracking system to ensure alerts are issued when action is required and tasks are completed, conduct physical reviews of files, follow a consistent schedule and assign responsibilities for the completion of tasks

- Beware of cyber breaches – never rely on emailed bank account details and double check details in person or by phone using a known phone number (not the one on an email), use multi-factor authentication on all applications, warn your clients about the risk of cyber attacks and inform them of your security protocols, particularly around the transfer of funds. See Lawcover's Cyber Risk Resources and Cyber Security Guide for detailed risk management information across all aspects of practice

- Prioritise supervision – make yourself available at regular scheduled times for juniors, provide and obtain regular feedback on their performance, define task expectations and ensure clear and consistent communications.

Remember, risk management is not a one size fits all approach. Measures should be tailored according to the practice and individuals. The tips provided here are by no means exhaustive!

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