

The importance of client selection

When considering Professional Indemnity claims it is often worth looking back at the root of where the issues first arose. What can become clear is that many claims could have been avoided if the client selection process at the firm was more robust.

In an uncertain political and economic landscape it is understandable that solicitors will seek to welcome new clients or generate more enquiry from existing clients in new areas to help ensure positive turnover for the firm. However, there is risk involved in accepting instructions from both new and existing clients and, if the firm's risk management procedures are not strong enough, what is usually seen as beneficial in the short term (more revenue and potentially a new long-standing relationship with a client that brings repeat business) is potentially detrimental in the long term.

In this article, I will look at the factors fee earners should consider before acting on a piece of work to ensure they keep their business shielded from a professional negligence claim.

The client onboarding process

It is of paramount importance to ensure the firm has a robust procedure for considering which clients to accept. Some things to think about are whether you have a solid client vetting process in place and, once the process is completed and it has flagged concerns in regards to the risk of taking instructions, whether you seek to get further information to satisfy or ease those concerns. Insurers are increasingly asking more questions about what kind of new enquiry firms are bringing in and how they are vetted, including the type of client, type of work being undertaken and the values involved.

It is also imperative that before any work is undertaken you ensure there is no conflict of interest. Have you acted for the opposite side previously? Has someone within your firm acted for the opposing side in this matter? If the answer is yes to either of those questions then the most prudent action may be to decline the instructions.

Regardless of how attractive accepting new instructions can be, you need to ensure that you or the colleague undertaking the work have the expertise and skills required to do it to a high level. While solicitors can often be presented with what seem to be good

opportunities, they do not always fall within the specialisms of the fee earner. Dabbling in work that is not in your area of expertise can often lead to mistakes and therefore increase the risk of a professional negligence claim being made against your practice.

Another consideration worth noting is your capacity to accept new instructions. Even if acting on the new work is within your expertise, it is important to also ensure that you can give the time and attention needed to guarantee good quality work is done for the client. Spreading yourself too thinly can result in work not being done to the best possible level and can leave you exposed to a claim.

Client expectations

Establishing the client's expectations prior to accepting instructions is another consideration that should be central to your onboarding process. It is common to have certain clients who have expectations that are largely unattainable. It is therefore essential to give thought to whether you are able to deliver what the client is asking in the given timeframe. Ask yourself whether the client's expectations are fair and reasonable or if they are unrealistic. If you think it is the latter, it is vital to communicate this to the client and aim to establish a realistic plan you can commit to confidently. If you are unable to agree on a plan that works for both parties it is best not to accept the instructions.

You should also consider why you have received the enquiry. Has the client instructed another firm before engaging with you? Where possible it is important to find out why they have sought your advice after dealing with another firm. What went wrong? Could the same issues arise due to the client's unrealistic expectations?

You should also think in the long term.

At the initial stage of engaging with the client make sure you consider what sort of client you think they will be and whether you are both aligned. Not engaging at all may be the best approach if you think frequent issues will arise.

Existing clients

It is important to ensure that your client due diligence processes are still applied when acting for existing or previous clients. You cannot assume that you do not need to apply your client vetting process just because you or someone in your practice has acted for a client before. The instructions from the client may differ from those they gave previously or the client's situation may have changed. Whilst this may take time, it might be worth considering creating an existing client due diligence process so that it is not so onerous in future.

Insurance perspective

Limit of Indemnity: Remember to bear your insurance in mind when accepting new work. Depending on the structure of your practice, primary layers of PI insurance are either £2m or £3m. When you are instructed to take on a new piece of work where the transaction value exceeds this level, ask yourself whether your business has the appropriate amount of cover. Even if it is just one transaction where the value is higher than your current limit of indemnity, it is not advisable to undertake this work without appropriate top up cover. You cannot take out cover for a one-off transaction and any top up cover should be maintained for a minimum of six years after the transaction has taken place. The current excess layer market has seen significant increases in premium, so it is important to consider whether the enquiries you may receive are worth undertaking if it means spending potentially significant sums on excess layer coverage which in the long run will outweigh the fees generated from the work.

Whether you take out top up cover or not, it is also important to consider whether instructions you have received mean acting on a transaction(s) that is significantly higher than what you usually undertake.

This changes the risk profile of your practice and could result in your insurer no longer being comfortable with your risk. If you are ever unsure it is always worth speaking with your broker before accepting such instructions.

Areas of Work: is any new work in line with your existing areas of work? You should consider your risk profile in the eyes of insurers before taking on work which has not been undertaken by the firm before or when the amount of fee income derived from a certain area increases significantly. For example, many insurers have caps on certain areas such as property, commercial and personal injury work. Whilst it can be a good source of income, you must not forget your obligation to disclose new areas of work under the 2015 Insurance Act. Your insurer could refuse to pay out if they are not notified of new work and a claim is made relating to that new work type.

Source of Enquiry: As mentioned above, insurers are asking where firms are sourcing their new enquiries, the quality of such enquiries and the potential risk factors that may come with a certain profile of client. Do you meet with all of your clients? If you do not meet with your clients, what measures are taken by your firm to ensure you have enough comfort to act on their behalf? Another important consideration when completing

your renewal presentation is to mention whether you have a clear policy on who you will not act for and, if there is data collected, the average amount of enquiries the firm has refused during the year. Whilst it may not seem significant, by mentioning this you can show insurers your attitude to risk which can often have a positive impact on your PI renewal.

You should also seek to understand why the client has come to you. For example, if you are based in Surrey and you receive an enquiry from an individual based in Yorkshire wishing to purchase a property in Yorkshire, ask yourself why. Whilst you may have received a referral due to the reputation of your business, it is worth seeking clarity as to why the client has come to you and not a local solicitor practice. Insurers take note of the location of your client base and, unless your practice has the infrastructure to undertake a matter that is located far away, it can create issues with your renewal.

It is of the utmost importance that you have a well-thought-out client selection process

which ensures your firm's position is not compromised. Think about the long-term implications of accepting instructions from a client and weigh up whether it is worthwhile accepting them. In a more challenging market, insurers are seeking more supplementary information along with your proposal form, so showing them what your client selection process includes will aid your broker when they undertake renewal negotiations on your behalf.

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