

Reducing the chances of things going wrong

(Lecture B1190 – 16.08 minutes)

Over the last two months, articles have introduced the concept of risk management, highlighting common causes of claims, highlighting why risk management is important and considered issues with engagement letters in more detail. This article is aimed at highlighting how to reduce the chances of things going wrong; common pitfalls that can arise in a professional practice and how those can be prevented. It contains practical steps that can easily be taken to minimise the risk of problems arising within a professional practice.

The topics that we are going to consider include the use of file reviews, appropriate systems for high risk areas and the creation of an appropriate "no blame" culture within the firm as well as the importance of communication. All of these will reduce substantially the chances of things going wrong within a practice. Systems for engagement letters, liability caps distance selling and fee overruns have been discussed before.

File Reviews

I am a big fan of file reviews. You should review your own files and get somebody else to review them, but in a no blame way. The file review should look at two aspects, looking first of all at compliance with the firm's processes and systems. So it would check whether or not the firm's engagement letter has been sent out, whether all file copy letters are on the file and have been initialled as complete (otherwise how do you know if a letter is in draft or a final copy), whether electronic filing is up to date, whether there is a signed engagement letter on the file. Then you check whether billing is appropriate, has billing has been done at appropriate intervals, whether the billing is in line with the fee quote. Has the client been updated in accordance with your engagement letter?

The second part of the file review looks at whether value has been added. Is there a strategy in place. If the engagement is a transaction, are you dealing with all aspects of the transaction in accordance with the engagement letter? There is a sample file review form in my book which covers most aspects of the points I am raising.

How often should they be done? Quarterly? Six monthly?

Who should do them? I think it's useful if they're done by Partners, but they could also be done by, say, a Managing Associate, someone at that level, because they are a good development skill if nothing else.

Randomly auditing files to see if they comply, whether they are being progressed and whether value is being added will help you identify where systems are failing, identifying whether there are any shortcomings in the individual who's work is being undertaken is a bonus, but that's not the main priority.

The priority is to see where problems are and to put them right before they become a problem. Drafting a file review form is important.

They can be done inter-department so somebody senior within the department could undertake the file review, but they can also be done cross-department so, for example, if you have a firm with two departments, someone from department A can undertake file reviews for department B. You don't have to have specific knowledge of the work undertaken in the department to undertake the file review.

An important question is, where do you keep the file reviews, they don't stay on the client file – that's very important. They are not a client matter. Keep them in a risk file.

Discuss them with the Partners at Partner level. They are not really for the department; they are for a higher level than that.

The time spent on file reviews should not be charged to the client, because they are not a client issue, they are a risk issue. They are there to identify problems with the systems, so that the systems can be improved and, as an aside, to identify if there is an issue within the department or at fee earner level. This will enable you to identify issues on a particular file, issues with particular individuals, issues within a department and issues within systems.

Supervision

All too often, I see claims where files have not been supervised at the appropriate level. You may have a rising star in the department; they still need to be supervised. You should still have peer to peer, or Partner to Assistant, supervision.

Post

Post is quite easy to supervise because it's physical, you can see it when it comes in and you can see it when it goes out. There should be a post review system. So all post coming in should be looked at by a Partner or senior member of staff, so that at least you can see if there are any complaints or issues. The post can be looked at very briefly before it goes to the person dealing with the file.

Again, post going out can be looked at before it goes out, particularly if it's a report or contains substantive advice.

Email

This is where more claims arise, as I've mentioned in *What Can Go Wrong?* an earlier article, because email is immediate and is sent out by the fee earner with email access.

You need to have a policy for emails. Some firms have a policy where junior staff don't have access to sending out emails. That can be a bit draconian and it can prevent them doing their work.

You can have a policy where junior staffs' emails go into a holding pen, so they send an email, but it doesn't actually go out until it's released by a more senior member of staff. That can work, but the problem with that is that the junior member of staff has sent the email, but it doesn't actually go until it's been reviewed and that can cause delays, and also what if that senior member of staff doesn't know the file, how will they pick up on the issues?

An alternative is that that junior member of staff has to sign up to a policy whereby they agree not to send out emails with any substantive advice until they have been approved. You then have to trust the junior member of staff to abide by that policy and you can check the file, and check their email box if you wish to, to make sure that they are abiding by that policy.

It's important that you check and have a policy that suits your firm, think about it and apply the policy.

Also relative to emails, think about whether or not you want to have an auto-complete on your email address, because that be dangerous because it can go to the wrong person by mistake and that can be very dangerous and it can also give rise to data protection issues.

Think about whether you want an address check on your email so that, when you send an email and you type in an address, your system can actually check is this the right person that you want to send the email to? Just think about it.

Meetings

It's important to hold meetings. You don't want to hold meetings to the point of it preventing you from undertaking valuable chargeable work, but meetings are a great way of passing information around the team, the office and the department. Information can be communicated quickly and at an appropriate level. Perhaps have a team meeting once a week, perhaps at the start of the week, so everybody in the team knows at a high level what's happening. In in that way if an email comes in, or a client telephones, everybody in the team has a knowledge, at high level, of who that client is and what their issues are.

It also helps to know what the team are doing, so you know where anyone is expected to be and where work pressures might arise.

That's also important, particularly if you have remote workers, perhaps have a virtual meeting, once a week so you know who is doing what. Remote workers can be an issue, because if you do have a team of remote workers, what happens if somebody doesn't log on one day, how will you know?

If you have teams across a number of offices, or a number of departments, you do need to link in with them every so often, just so you know what's happening across those department and across those offices, particularly if you have clients who are serviced across those offices and across those departments, so that information is disseminated at the appropriate level, across those offices and across those departments. Those meetings don't need to take very long, but you do need to find a way of disseminating information. If a failure to disseminate information occurs, the Courts probably won't have any sympathy with you as a firm, they are likely to say that information comes into the firm, and is therefore known to the firm.

Partners

Partners should be supervised. What happens when a Partner leaves? Partners have personal problems; they are all human beings. I am not saying that Partners need to be supervised to the nth degree, but there is perhaps the need for a policy whereby any substantial piece of advice given by a Partner, needs to be peer reviewed.

If a Partner looks like they're having difficulties, a supportive environment whereby they can be supported and issues picked up, will go a long way to preventing problems in the firm.

No Blame Culture

It's really important to engender a no blame culture, but how do you do that? You don't want people to feel that they can't tell you when something is going wrong. In the firm I set up, I devised a system whereby we had breach forms, so that any breach of the firm's policy could be reported, but they were anonymous. We weren't reporting the individual who had breached the policy, merely that a breach had occurred, so that we could identify where the system had failed, so that we could improve the system. Individuals who did make mistakes found that they got a sympathetic ear. It takes time, but it is worth bearing in mind that trying to focus on a no blame culture, which has to come from the top down, will reap dividends. You can work together to improve the way the firm works, that will prevent people from burying their heads in the sand, trying to hide problems and hoping that they will go away. As we all know, those problems can only get worse.

Communication

As I hope you all realise from what I've been saying, communication is key. All too often I see claims where there has been insufficient communication within the teams, within the departments and across the offices. If you can encourage communication on all those levels, you will have a much less risky firm, and this is much more important nowadays, particularly where cross selling is being encouraged.

I talk about the good, bad and ugly. When things go wrong, we need to treat it as a learning experience and this is extremely good risk management practice.

We don't just learn from attending courses and listening to webinars.

If you have a problem file in the office, whether it's an actual claim, or a near miss, if you're brave enough to treat it as an example and talk about the file that has gone wrong, from personal experience, it is so much more powerful.

Those people who are brave enough to talk about how something has happened to them, what has gone wrong, or what nearly went wrong but didn't, how it's been put right, or how it hasn't been put right and what has happened as a consequence, that's the best learning experience, and at least you get something good out of a bad experience.

I hope you found this helpful, these are very practical steps, small steps that have a huge impact and that will help your firm be a much less risky practice.

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