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Guide to Causes of Claims

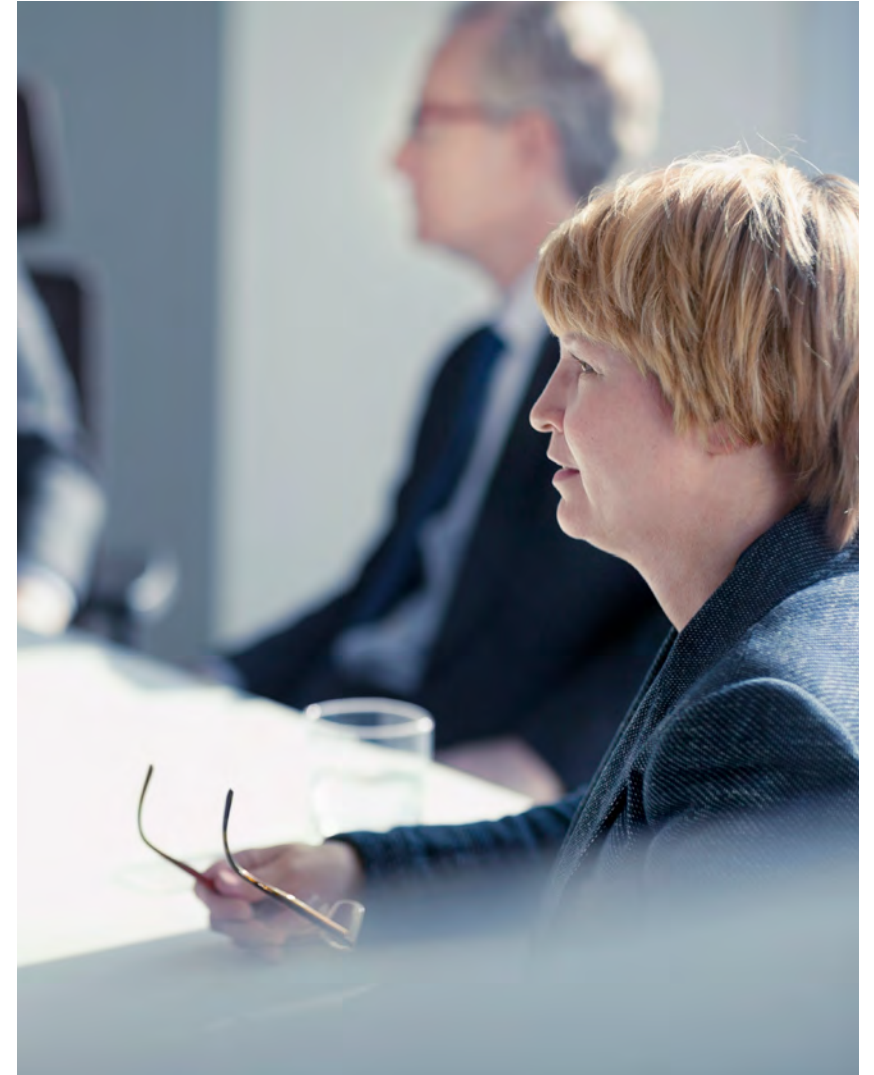
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Introduction

Dealing with claims is extremely costly for firms for a variety of reasons:

- The time taken to deal with the claim itself
- The cost to the firm of expending that time
- The cost to the firm in terms of any increase in insurance premium or of any element of a claim that may not be covered by insurance, plus
- The reputational risk to the business.



Common causes of claims

Research tells us that whilst there are numerous causes of claims, there are several common causes that repeatedly give rise to claims. We list some of these below:

- Failing to take action before expiry of the statutory limitation date
- Giving poor or incorrect legal advice
- Missing a key date (e.g. in litigation)
- Failure to give Advice
- Delays in delivering advice
- Drafting errors (e.g. when drafting a will)
- Instructions being overlooked
- Failing to take crucial steps or actions
- Suing the wrong party
- Costs triggers (e.g. wasted costs / unjustifiable costs)
- Undue influence (e.g. when dealing with wills)
- Cyber breaches (the number of this type of crime continues to grow. The SRA reported that over £11 million of client money was stolen due to this type of crime in 2016-2017.)
- Conflicts of interest arising.
- So-called 'Friday frauds' (Here, typically a fraudster masquerades as a seller in a residential property sale and absconds with the completion monies. Both firms on either side of the transaction are then potentially exposed for a breach of trust and claims.)
- SDLT errors (incorrect paid or not paid at all)
- IHT errors.

What you can do to help prevent claims

Identify the secondary cause of a claim

Once you have identified the main cause of a claim, by undertaking a root cause analysis and digging down further, you will be able to identify the underlying secondary cause that gave rise to the claim. These generally include one or more of the following:

- Inadequate supervision
- Failure to properly manage client files
- Excessive workloads causing fee earners to make mistakes
- File handovers not being dealt with properly
- Fee earner error due to lack of experience
- Fee earner error due to accepting work outside area of specialism
- In appropriate delegation of work
- Failure to provide clear fee quotes
- Costs exceeding quotes given to clients
- Staff absences leading to delays
- Incomplete training
- Staff failing to attend training.



Suggest next steps

Once you have identified the reasons for the claim, including any underlying issues, the Firm should then implement and follow a strategy to reduce the risk of claims. This should include:

- Tackling known issues: this will help avoid reoccurrences
- Detect failures early: this can be done via the supervision process
- Ensuring staff are aware of the Firm's policies and procedures via a comprehensive training programme that covers off known issues and common issues that give rise to claims
- Consider increasing the number of file reviews and level of supervision for staff who have been identified as having issues / difficulties.



Recommendations on how to deal with common issues

- **Missed limitation dates:** Improve compliance with Key Dates. Put a Key Dates policy in place if not already. Add to file review checklist, if not already
- **Wrong Advice:** Ensure scope of instructions is clear and advice is properly supervised. Ensure work allocated to fee earner with appropriate experience, within area of expertise
- **Failure to give advice:** Ensure scope of instructions is clear, including any changes to instructions and work is properly supervised. Ensure work allocated to fee earner with appropriate experience, within area of expertise
- **Drafting Errors:** Put policy in place on 'Use of precedents', ensure proper supervision is taking place
- Provide 'Difficult Conversations' training for staff.

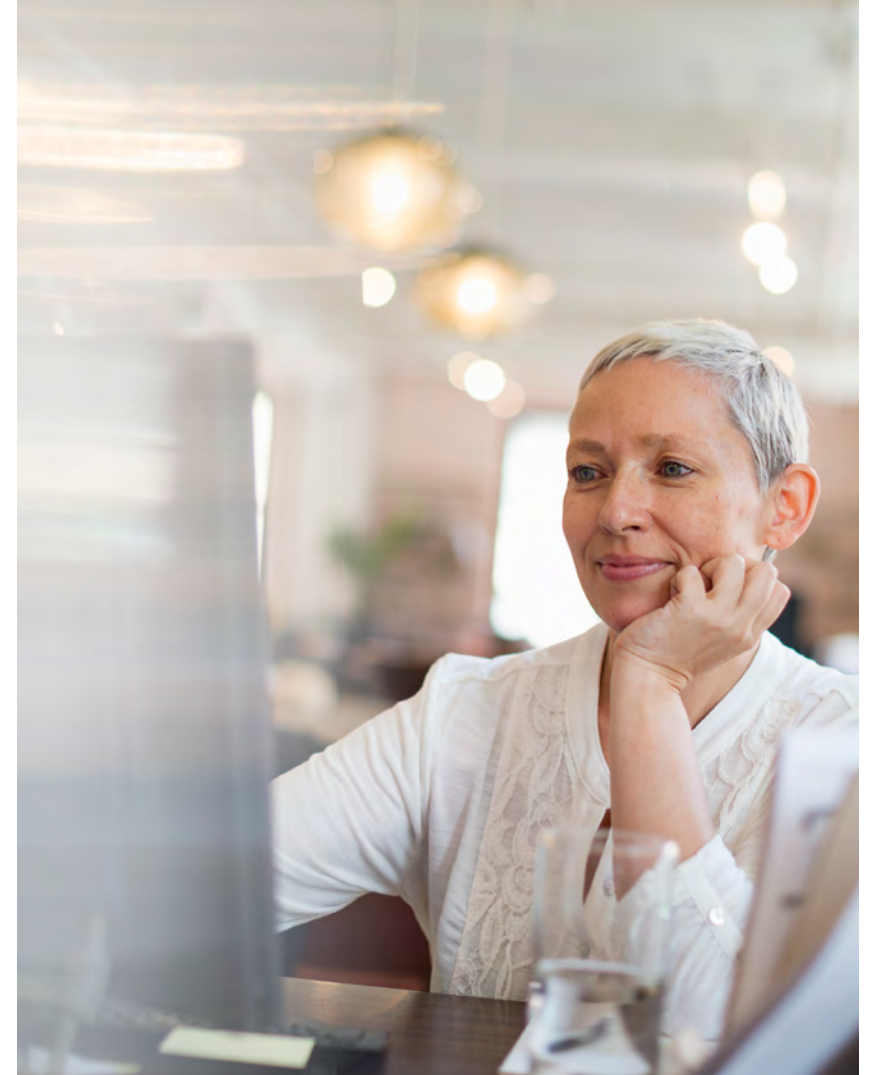
Note: The Lockton Portal contains guides and checklists to assist you to deal with many of the above issues.



Recommendations on how to detect issues early

- Monitoring of risk data
- Selecting files for review based on risk criteria
- Consistent approach for file reviews
- Consistent approach for supervision
- Undertaking detailed root cause analysis to identify causes and trends
- Monitoring compliance controls to ensure effectiveness
- Capture all complaints data.

Note: The Lockton Portal contains guides and checklists to assist you to deal with many of the above issues.



Suggested process

- Scoping initial instructions
- Capturing ongoing instructions
- File opening risk assessments
- File Review Processes
- Key dates process
- Root Cause Analysis process
- Supervision Processes
- Use of precedents
- Using Data for Risk Management
- Ongoing training programme for staff, including specialized training where needed, for example for COLPs and COFAs.

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