

Guidance Document

“Are You Missing Something?”

It may surprise some that a high percentage of negligence claims against solicitors are caused by missed time limits, rather than inadequate or incorrect advice given. Our experience has shown that the issue is often due to a lack of effective systems and controls in place to prevent time limits being missed.

There are numerous types of claims related to key dates, just a few of the major causes include:

- **Missing a date for filing court documents leading to limitation problems or losing the case;**
- **Failing to apply for/issue proceeding on time leading to delay, and subsequently missed time limits;**
- **Failing to advise the client on the correct time limit or limitation date;**
- **Failing to register an option under a lease within the time limit;**
- **Late tax payments.**

Complaints related to key dates are commonly experienced by solicitors, and the cause of failing to meet a time limit is often due to a knock on effect of other issues, often as trivial as administrative errors such as key documents not being sent out on time, to the correct address or the correct party.

Another major contributory factor is general delay. Delay in the progress of a case can be caused by a host of issues, such as filing errors that can result in time spent trying to retrieve documents;

time pressures, work overload and ‘mental blocks’ which could be due to a lack of supervision; and misunderstandings that are often a result of poor communications with the client or other professionals. Whatever the reason for the delay, the consequences can be costly, often resulting in missed time limits, poor client relationships and complaints or negligence claims.

Regular review of matter lists showing last activity date with flags set when this exceeds, say, three months can help prevent delays. Even if you are a sole practitioner, reviewing your files on a monthly basis at least, would help to identify matters that might be at risk of delay. In addition, keeping clients informed throughout the case will help create transparency and avoid any misunderstanding of how fast the matter will progress. In any case, solicitors have a duty to advise clients of key dates relevant to their case, any responsibilities they might have, along with the implications for missing the dates.

The legal profession can be highly pressurised, with solicitors not only having client expectations to meet, but also compliance requirements and quality standards to comply with. The added administrative tasks can be onerous when time is lacking. Nevertheless, solicitors must be alert to actions that could lead to missing a key time limit which could be a far more costly occurrence.

Ensuring controls and procedures are in place such as those suggested in the solutions below, will help your practice combat the risks described here.



Define & Identify

It is important to research and define all the types of key dates applicable to individual work types within your practice.

- Definitions for key dates/time limits should be centrally recorded, kept up to date and reviewed annually.
- Establish a procedure to enable early identification of key dates relevant to each case.
- Define the format and content for recording key information consistently by all (e.g. using a case management system, and agreeing date formats).



3-Point Recording System

Human and technological errors can occur even when we strive to put controls in place. Incorrect deadlines might be entered, or a system may cease to work on that key date! So adopting a 3-point diary system offers an effective safeguard against the risks of missing key dates. Record key dates for each case in:

1. **Individual diaries** - should be accessible by others in the practice and entry logs should be clear to understand.
2. **A central system** - where key dates relating to all cases are recorded in a consistent manner and monitored regularly.
3. **The case file** - clearly and legibly in a prominent place.

Also, don't forget to advise your client of the key dates, in writing.



Lead by Example

Once the practice has defined its procedures for identifying and recording key dates, all staff should be trained on how to apply it in practice. .

- Everyone should be held accountable for recording their key information in a consistent manner, including the partners who should set an example of applying best practice continuously.
- Raising awareness on the importance of risk management when it comes to key dates, will assist in many situations, for example where a fee earner is absent unexpectedly and a colleague needs to take over the case.
- Structured hand over procedures should be in place for holiday and other planned absences, including full handover when someone is about to leave or change positions.



Review & Monitoring

The processes and controls your practice has employed to mitigate against the risk of missing key dates should be regularly monitored for its effectiveness.

- Some automated systems may have useful tools that can help you review data entered and identify exceptions.
- A reminder system to inform you of key upcoming dates related to your case should be utilised (this may be manually recording countdown dates in your diary system or an automated alert system).
- Leave sufficient time to act before the date falls due - some may only need 1 or 2 days, others, weeks or even months to prepare complex bundles.
- File reviews and appropriate supervision (if relevant to your practice) can confirm whether controls are effective and help to identify training needs.

These are simple measures. Adopting them will help mitigate the risk of your practice missing a key date and improve case management and client relations. The risk is not worth losing your case over or having to bear the true cost that such claims can bring with them, such as a drain on partner/employee time, added stress, lost profit and reputational damage.