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Dear Members,

Over the past number of years, the overall number of claims taken against solicitors was relatively constant. Unfortunately that pattern has changed within the past year. We have noticed a substantial increase in claims and **Jim Graham** in his article on page 2 outlines the SMDF's experience with regard to them.



Chairman  
Maurice R Curran

We want our members to practice safely, which is why we advocate identifying and managing the risks inherent in the practice of law. **John Shaw** of Michael Houlihan & Partners has identified certain areas which continuously give rise to claims. I am setting these out below in descending order of frequency, as a quick checklist for you. The main causes of complaints against solicitors are delay, failure to communicate and failure to carry out instructions correctly. The failure to carry out instructions correctly and the failure to communicate can both be addressed by a implementing a proper case management system and by constant diarying and follow-ups.

We have included an article describing a particularly difficult case which we settled recently at the full value of the claim – see **How a small oversight became an indefensible negligence claim** on page 3. This case involved both delay and a failure to communicate and the ultimate cost to the Fund was very high. I would draw your attention to the risk management action plan contained at the end of the article.

**Margaret Moran**, our manager, has a few words to say about our members and the great sense of loyalty there is among so many of you on page 4.

We have supported **Anne Neary's** Practice Management Seminars around the country and representatives of the Fund have met many of you at these events and heard your views and your concerns. We hope to continue to do this in the autumn. See the back page for details. As always, we are delighted to hear from any of our members either by letter, email or by phone.

*Maurice R Curran*

Maurice R Curran - Chairman

## Common causes of claims

1. Failing to issue proceedings at all or in time
2. Advising a client that they had no action when they had
3. Failing to do proper licensing searches - Mapping errors are a frequent occurrence
4. Giving negligent undertakings
5. Acting in a case involving a conflict of interest
6. Failing to renew or properly transfer pub, restaurant and dance licences
7. Suing the wrong defendant or not suing all prospective defendants
8. Repeated failure to adhere to client's instructions (e.g. settling cases without having client's authority)
9. Failure to correctly interpret Counsel's advice
10. Conveying the wrong property
11. Failure to register charges
12. Failure to appear on behalf of clients
13. Conveying the same property to two different parties
14. Failure to correctly interpret testator's instructions into a Will and various probate problems including lost Wills and destroyed Wills



EVENTS AND NEWS UPDATES

**FORTHCOMING EVENTS**

The Countrywide Seminar Series sponsored by the SMDF continues:

**HOW TO MAKE A PROFIT ON EVERY FILE**

4 CPD Practice Management Credits - get all your CPD Practice Management Points for the 2006/2007 cycle at one event in your locality

1. Waterford (Venue TBA) September 2007

2. Galway Tuesday, 25 Sept 2007 Merrick Hotel, Eyre Square from 3pm - 6.15pm

3. Donegal Autumn 2007 TBA

4. Mullingar Autumn 2007 TBA Contact Anne Neary for details

**OTHER EVENTS**

**SOLICITORS WORKSHOPS**

Implement The Anne Neary Solicitors Toolkit in your Practice

4 CPD Practice Management Credits

Thurs 18th October 2007 2.45pm - 6.00pm 27-29 Lr. Pembroke St. Dublin 2

**LEGAL SECRETARY'S TRAINING COURSE**

Based on The Anne Neary Legal Secretary's Toolkit

Wed 31st October 2007 2.00pm - 5.00pm 27-29 Lr. Pembroke St. Dublin 2

Contact [anne@anneneary.ie](mailto:anne@anneneary.ie) or Tel: 01 - 491 1866 for details

**SMDF experiences a 36% increase in claims over the past year.**

As set out in the previous newsletter, all incidents reported to us are designated either as a notification or a claim. An incident is only designated as a claim when we are satisfied that a claim has been made against the member or that it is 90% certain that a claim will be made.

In the past underwriting year 2006, we saw a **36% increase** in actual claims. Some notifications made in 2006 may go on to develop as claims and this will also show as an increase in the 2006 claim numbers.

Currently it is hard to identify exactly why we have had such an increase and we are doing further research into this. There are some hard figures, which show the source of claims; however, there are some other reasons that may explain the increase in numbers. It could be that practitioners are making more mistakes or perhaps the clients are expecting a very high duty of care and are more inclined sue their solicitors if they feel that they have not been properly served.

One only has to read in the newspapers and look at various websites such as 'Rate My Solicitor' to see that there is an increasing lobby to encourage clients to sue their legal advisors. We have noticed an increase in lay litigants who are intent in suing their solicitors and involving them and the Fund in significant legal costs and outlay to defend what are sometimes vexatious and frivolous actions.

For the year 2006, we have found that 37% of our claims arise from **domestic conveyancing** and these range across a broad number of areas such as breaches of undertakings, a breakdown in office systems, errors with regard to mapping and many others.

**20%** of the cases involve the **Statute of Limitations** and a failure to issue proceedings on time. At this stage with the many reminders regarding the changes in the Statute of Limitations and the introduction of PIAB, we are surprised that we are still seeing a significant number of statute cases. We are hopeful that these figures will decrease over the coming years as practitioners become more familiar with the legislation.



Jim Graham

In conclusion the message remains the same - follow the 5 point guide to claims below. Don't forget that:

- notifying us of an incident does not affect your professional cost going forward
- a notification does not become a claim until an actual claim is made, and
- the earlier we are notified of an incident, the quicker we can respond and assess the appropriate steps to take.

We have been involved in situations where a member notified us in time of a difficulty and by taking prompt and pre-emptive action, the incident never progressed to become a claim.

**Jim Graham**  
Claims Consultant

**The 5-point Guide to Claims.**

- Tell the Fund as soon as you are aware there is a problem
- Complete the Incident Report form immediately
- Nominate and work with your panel Solicitor
- Be honest in your assessment of your own position
- Advise your client of the potential problem and that he should seek independent legal advice.

**The quicker you tell us, the quicker we can act to lower the cost of the claim.**

## How a small oversight became an indefensible negligence claim.

Anne Neary, Anne Neary Consultants.

The SMDF recently settled a case which concerned the drawing up of a will. A client attended at a solicitor's office and gave him instructions to draw up his will, which was done and a letter was sent to the client asking him to come in to his office to discuss it. A week after this letter, the client did attend at the office and made a number of amendments which were written on the draft. He did not execute this draft will. An attendance note dated four days later recorded the changes to the will, but no further steps were taken or instructions given with respect to executing the draft will.



Anne Neary  
BCL LL M (Yale)

There was no correspondence between the solicitor and the deceased following their meeting at the office. Nor was there evidence that the solicitor made any attempt to contact the deceased or advised him that unless he had made a will previously, he would die intestate if the draft will was not executed. However, the solicitor was adamant that he had advised his client clearly and unambiguously that the draft will would need to be properly executed to have effect as a valid testamentary document. Unfortunately, there was no record of this advice and no letter sent to the client following this meeting. The client died some eight years later and his estate was divided according to the intestacy rules. The claim of the disappointed principal beneficiary was settled at full value.

### Risk Management Action Plan

In his address, Maurice Curran points out that the main causes of complaints against solicitors are delay, failure to communication and failure to carry out instructions correctly. This case involves all three – a delay for eight years, a failure to prove that the solicitor communicated the required legal advice to his client and a failure to carry out the client's instructions correctly, as there was no engrossed will prepared incorporating the amendments, no attendances on file recording the events and no letters sent to the client recording the advice. Maurice Curran then recommends that implementing a proper case management system would help to ensure that difficulties like these do not arise. If you have never implemented a comprehensive case management system, this is a good place to start. A case management system for drafting wills will contain all the necessary attendances, letters and advice to defend a similar action:

**Assemble a full set of precedents** regarding the drawing and executing of wills in one central file – these precedents should include:

- a. **Standard will templates**
- b. **Precedent letters** which can include confirmation of instructions, general advice on wills and their execution, sending out a draft will for approval, containing a request to the testator(s) to attend the office to execute the will, a follow up in the event of their non-attendance, disengagement terms etc.
- c. **Precedent forms** to include an instructions sheet, a case plan for the client, a workflow, a progress sheet, standard attendances which also serve as reminders, and a wills register which is kept up to date;
- d. **A diary and reminder system** to ensure that either the will is executed, or the client is sent a disengagement letter.

Detailed instructions on how to set up and run case management systems for conveyancing, administration of estates and litigation are contained in **The Solicitor's Toolkit**.

Anne Neary is a solicitor and a management consultant to the legal profession. She can be contacted at [anne@anneneary.ie](mailto:anne@anneneary.ie) or by phone at 01 - 491 1866

NEWS ITEMS

**How to make a profit on every file**

The Anne Neary Countrywide seminar/workshop series supported by the SMDF

**Kerry Law Society:**

**John Galvin** President of the Kerry Law Society organized a very successful event in Tralee on Monday 23 April which was sponsored by the SMDF. There was a terrific turnout of Kerry solicitors who were welcomed by **John Shaw**, Managing Partner of Michael Houlihan & Partners, representing the fund. John Galvin chaired the afternoon session as **Anne Neary** dealt with issues such as how to identify which files are loss leaders, what to do with loss leaders, why certain legal services are now regarded as commodities by clients, how to generate profits on every file and how to turn loss making files into profit making files. **Kieran Finnan**, a banking consultant, went through the complexities of banking and how solicitors can maximize their returns on banking. Delegates completed a practice management questionnaire, which was like a mini-audit of their firms risk management and practice management procedures during the afternoon. In all, almost half of the entire membership of the Kerry Law Society attended the event.

**Southern Law Association:**

**Crona Hughes** Secretary of the SLA organized a similar event in Cork on Tuesday 24 April in the Clarion Hotel. There was a great turnout, with over 90 delegates attending. Thanks to the Clarion Hotel which catered for double the number of delegates they expected. **Tom Shaw**, Senior Partner of J. A. Shaw & Co., represented the Fund on this occasion. **Andrew Charleton** of Back Consultants, an IT consultant, described how current software can revolutionise the provision of legal services and what is happening in the UK in this area, **Anne Neary** described how to streamline routine legal work so that it can be effectively delegated to lesser qualified staff and gave practical strategies and tips for increasing profits on various categories of files. **Kieran Finnan** went through a banking health check so that practitioners can check their own banking arrangements to ensure that they are getting the best deal from their bank.

**Limerick Bar Association:**

**Ann Marie O’Hanrahan**, secretary of the Limerick Bar Association was the force behind the workshop in Limerick. **David Boland**, Managing Director of Documatics, gave a presentation on Using software to create a Lean Business. He described how the use of software for case management, workflow management, digital dictation, diary management, business reports and disaster recovery can speed up the delivery of quality legal services which deliver value to our clients. **Anne Neary** expanded on those ideas and demonstrated how the internal organisation of the legal work can reduce the cost of delivering a legal service and increase profits.

**1 May 2007 was the 20th Anniversary of the Fund.**

In that time the Fund has provided professional indemnity cover to a substantial majority of solicitors in Ireland. This remained a constant over the 20 years and we are grateful for the loyalty of our members. We hope that we deserve that loyalty in our efforts to provide an efficient renewal and claims service as well as competitive contribution levels.

We are aware of the increased competition in the market but ours is a unique offering to practitioners in that we are set up specifically to provide a service for solicitors. This was never more true when the cost of indemnity insurance was prohibitive and SMDF led the way in bringing premiums to a more acceptable level.

We are a small team in the SMDF dedicated to provide service to only one set of customers; our fellow solicitors. Thank you for your continued support and we hope to be able to serve you for another 20 years



Margaret Weber  
Manager

Contact us: 01 - 676 3118, visit our website [www.smdf.ie](http://www.smdf.ie) or contact Margaret Weber [margaret.moran@smdf.ie](mailto:margaret.moran@smdf.ie)



set up by solicitors  
for solicitors

**Our services now include:**

**Practice Management Newsletters** – keeping you up to date

**Practice Management Audit and Advice** – a confidential service designed to help you keep up with recommended business strategies

**Countrywide Seminars** – contact us if you would like one in your local area

