

GUIDANCE NOTES FOR LEGAL PRACTICES

Legal knowledge

Most negligence claims arise from administrative errors, not from lack of legal knowledge. But there are still a number of claims every year which are caused by practitioners getting the law wrong.

This is usually where lawyers are out of their depth and are dealing with a matter beyond their skill or experience. They fail to identify the legal issues correctly, or are unaware of recent changes.

It is essential to keep up to date with developments in statute and case law. If there are major changes in your field of practice, arrange that at least one practitioner from the firm attends a reputable course on the subject. Make sure that everyone in the firm is familiar with the changes, including support and administrative staff.

- When anyone attends a course, set up an in-house training session for them to pass on the information
- Allow time in these sessions for questions or debate.
- Build in further training or review sessions for later in the year. Sometimes the implications of new legislation are not fully appreciated, even by experts, until it has been in place for some time
- Have questions, a 'quiz' or a review to check that staff have understood the training
- If there are changes in legislation, make sure any standard letters or advice leaflets are updated to reflect this

- Check the stationery cupboard and remove any old forms, so they can't be used by mistake

Dabbling

The single biggest risk of negligence arising from lack of legal knowledge is that involved in 'dabbling' – taking on work which is outside your own skill and expertise. All lawyers will want to expand their range of practice, but everyone should be wary when moving into a new area of law.

- An existing client asks you to deal with another matter for them, and you don't want to say no because you have a good relationship with them
- A new client presents work which is very interesting, but not within your usual area of practice
- You take on a matter but it then turns out to be different from the work you originally agreed to do
- An existing client recommends a friend to instruct you – it's not really your area of work, but you don't want to turn them away because of the recommendation

Remember that if you take on work but can't complete it effectively and safely, it will do more damage to your client relationship than politely declining a matter with an explanation of the reasons for this.

It may be appropriate to refer the client to a colleague. If it's work that is really outside your firm's area of practice, then consider whether you can refer them to another firm that you know has expertise in this area of law.

Some solicitors genuinely want to move into a new field, or to expand their skills. This requires good support, and unless they have a colleague with experience in this area, or have the time to research it thoroughly, they may run into problems. In some circumstances, you may want to instruct counsel, but bear in mind that you cannot rely blindly on counsel's advice – and that your client must be prepared to pay for it.

Be clear about the work that you can and cannot do, and do not be pressured (or tempted) into taking on work that is outside your area of expertise just to keep the client happy.

Some points to consider:

- Ensure new instructions are reviewed by a partner before entering into a retainer
- If in doubt, refuse instructions – pass the client elsewhere for specialist advice
- Set a policy that no-one should take on a matter outside their expertise unless agreed by two partners
- Make sure that partners lead by example in keeping up to date with the law
- Does one person have responsibility for co-ordinating and monitoring CPD for all regulated staff?
- Are in-house seminars fully utilised so that courses are focused on your firm's needs?
- If you use in-house presenters, train them in presentation techniques so that those attending derive maximum benefit
- Annual appraisals should cover training needs – make sure these are completed each year, and that a supervisor/partner discusses courses before bookings are made
- Have a policy that fee earners who attend external courses have to give feedback sessions to colleagues. Book the follow up session when the course is booked, and do not allow it to slip
- Circulate articles and journals within the firm or an individual department, marking matters of importance. Make one member of staff responsible if you do not have a librarian
- Run regular departmental meetings to discuss and consider changes in the law. If you don't, client service may suffer

Non-legal training

Do not neglect 'soft skills' training which could make your staff even better at their work.

Computer skills, negotiation and listening skills, time management and other areas of development could make a significant difference to the way that staff perform their duties, and CPD hours can be claimed for a proportion of these.

You also have a duty to train your staff in anti-money laundering procedures and in equality and diversity requirements, in order to fulfil your statutory obligations.

Your regulator may require you to spend a certain number of hours each year on approved activities to gain Continuous Professional Development points. The number of hours varies and you should refer to the requirements of your own governing body for details.

Distance learning courses, writing of legal texts or articles, some types of legal research and practical skills courses may also count towards the total, but again you should refer to the organisation governing your qualification.

Although non-authorized staff may not be required to collect CPD points, do not ignore them when assessing training needs. They will need to be included in money laundering and equality and diversity training, and there may be other skills that could enhance their ability to perform their work.