

# Remote staff supervision: Managing the risks



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**I**t has been some months now since law practices have had to adapt to a new way of working and delivering services to clients. On top of the changes to working environments, many law practices have faced the challenge, potentially for the first time, of supervising and supporting staff remotely.

While lack of adequate supervision of staff is not a new issue, with many staff working remotely the risks associated with poor supervision may be heightened. Poor supervision has been the source of numerous claims against law firms over the years.

## When supervision is lacking

In *Victorian Legal Services Commissioner v Olayemi (Legal Practice)* [2019] VCAT 1283, a young solicitor had the carriage of a nomination and visa application for a client. Upon receiving a refusal letter and decision record, he realised he had made a mistake in the application. According to the evidence, the mistake was an easy mistake to make but fatal to the application.

The solicitor panicked and falsified documents, creating fictitious reasons to cover up the mistake, which he sent to the client. Only when the client accused the practice of fabricating the documents did the solicitor confess the truth to his principal.

In the disciplinary proceedings that followed (and which resulted in a finding of professional misconduct), the principal gave evidence in support of the solicitor. In his view, the solicitor's reaction spoke more about the pressures he was under than it did about his character. The principal admitted there were failures in the work environment. He admitted he had been placing unreasonable pressure upon the solicitor without realising the stress he was under or that his supervision was lacking.

## Adequately checking work

The case of *McLennan v Clapham and Ors* [2019] ACTSC 1 (confirmed on appeal) highlights the importance of checking the work of supervised staff. Prior to purchasing a house, the plaintiffs sought advice on the contract from the defendants, a partnership of solicitors. They attended the defendants' offices to go through the contract. The plaintiffs saw a conveyancing

## Snapshot

- Poor supervision has been the source of a substantial number of claims against law practices.
- With staff working from home the risks associated with poor supervision may be heightened.
- Now is a good time to review how successful working from home arrangements are and to identify potential areas of risk.

clerk rather than a qualified solicitor, but they did not realise that at the time. A number of documents in the contract related to the presence of asbestos, however they received very limited advice about this, and asbestos insulation was later found to be present in the property.

The solicitors were found to be negligent in their failure to properly advise on the contract. The conveyancing clerk ran the conveyancing aspect of the practice with little or no supervision. She personally signed the costs disclosures and letters of engagement. Although she was very

experienced, it was held that she was not in a position to appreciate what legal advice should have been given, nor to provide it.

## Practice tips for managing remote supervision

Although not exhaustive, the following questions should be asked and addressed when supervising staff remotely:

- *Practice and file management systems:* How do you share files with staff and clients? Do you monitor and/or review your staff's external communications? How do you approve work and provide feedback? Does your team share calendars?
- *Managing workload and wellbeing:* How do you communicate with staff i.e. teleconference or online video? Do you regularly hold meetings to discuss workloads and workflows? Do you conduct regular file reviews and monitor key dates? Are staff encouraged to contact you outside those set times?
- *Managing conflicts of interest and maintaining client confidentiality:* What procedures do you have in place to manage conflicts of interest? Do you have confidentiality guidelines for working remotely e.g. locking computers when not in use, keeping all file documents secure?

Bear in mind that your *level of supervision* may need adjusting depending on the staff member's level of experience, personality and role in your practice.

With working from home arrangements increasingly becoming entrenched in many workplaces, now is a good time to review how successful those arrangements are and to identify potential areas of risk. **LSJ**