

Emptying the 'too hard basket'

Risk Management Topics:

Practice Management

General Practice

Delay is consistently one of the key causes of professional negligence claims against solicitors, particularly in litigation. The allegations often relate to:

- Failure to commence proceedings within the statutory time limit;
- Delay in progressing a client's matter; or
- Delay in defending proceedings.

Delays happen for many reasons; some relate to poor diary management, a breakdown in communication or simple mistakes in noting down dates. Others arise because, for one reason or another, a file ends up in the 'too hard basket'.

Many of us will be familiar with the 'too hard basket' – the repository for those matters we're avoiding.



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Perhaps we perceive them as being too difficult, or we don't enjoy working with the client and so we put them off or avoid them. And it's easy to avoid them when we have so many other matters requiring our attention. But the longer we avoid them the harder it becomes to deal with them. And deal with them we must if we're going to avoid a complaint to the Office of the Legal Services Commissioner or a professional negligence claim or both.

In the recent Queensland case of [Legal Services Commissioner v Clark \[2024\] QCAT 506](#), the Legal Services Commissioner instituted disciplinary proceedings against the respondent solicitor alleging failure to maintain a reasonable standard of competence and diligence for reason of delay in progressing an appeal application on behalf of a client.

The Tribunal noted the solicitor stated that part of his 'coping strategy was to compartmentalise problem files whilst attending to all other matters' [at 50]. However, the Tribunal found that this approach should be understood as failing to attend to them and 'provides no satisfactory explanation of the [solicitor's] failure to act' [at 51].

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Practice Tips

So, what can we do to empty our too hard basket of a resident file? One of the first steps is acknowledging we have one. Do you have a file/s you are avoiding? If the answer is yes, here are three strategies that might help:

1. Prepare a memo of the issues you're struggling with and make time to speak with a colleague. Often just setting out the issues and getting someone else's perspective can help you to move the matter on. You could also ask a colleague to peer review the file and make suggestions
2. Think about when you're at your best. Are you a morning, afternoon or night person? If you are trying to deal with difficult matters when you just don't have the bandwidth for them, this could be the problem. Try dealing with difficult matters during the time when you work most effectively
3. If, for whatever reason, you are unable to move the matter on, consider suggesting to the client to transfer the matter to another practice. If you intend to transfer the file to another practice of your nomination, you will need to give the client notice of your intention in accordance with [rule 6 of the Legal Practice \(Solicitors\) Rules 2015](#). Rule 6 requires that you:

First give the client at least 14 days' notice in writing of:

- Your intention to transfer the file to another practice unless a contrary direction is received from the client; and
- The client's right to give you a contrary direction in relation to the conduct of the client's affairs and the delivery of the client's documents.

Where you hold money on trust for the client, you must also advise the client of:

- The balance of money held on the client's behalf;
- Your intention to transfer the money to the other practice unless advised by the client to the contrary; and
- The client's right to give you a contrary direction as to the manner in which you should deal with the account on the client's behalf.

Remember, before delivering the file to the new practice or into the custody of the client, be sure to paginate the file and keep a copy for your own records.