

# Drafting Errors: A Common But Manageable Risk

## Risk Management Topics:

General Practice

Practice Management

For many solicitors, drafting documents is part of the daily routine. However, like most routines, we can operate on autopilot - cutting corners, rushing through reviews, and overlooking critical details. While these errors may seem minor at the time, the consequences can be significant, both for the solicitor and for the client.

In fact, drafting errors remain one of the most common causes of professional negligence claims against solicitors.

## In 2024/25 drafting errors represented 18% of all claims.

The following examples illustrate how simple oversights in document preparation can quickly escalate into costly claims.

### Wills

A solicitor engaged to draft a will, met with the client, took detailed notes of her instructions, and then verbally asked his administrative assistant to prepare a draft using those notes. Unfortunately, when reviewing the draft, the solicitor failed to notice that a critical cross reference to another clause was missing. This omission created ambiguity about how the client's estate should be distributed after her death. As a result, a claim was made against the solicitor to recover the costs associated with rectifying the will.

### Contracts

Clients purchasing a property instructed their solicitor that a delayed settlement date was required to allow time for the sale of their existing home (the proceeds of which were needed to fund their new purchase). Negotiations moved rapidly, and the solicitor intended to draft a special condition allowing the buyers to bring forward settlement if they chose. However, the clause was incorrectly drafted, giving that right to the vendors instead. The vendors accepted the clause as written, and the contract was exchanged unconditionally. Six weeks later, the vendors exercised their right to an early settlement before the buyers' home sale had settled. The buyers were forced to obtain bridging finance to complete the purchase, and a claim was made against the solicitor for the resulting costs.

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#### Risk Management tips

Drafting errors can occur in any law practice, particularly when workloads are high. However, the risk of errors can be significantly reduced through consistent use of good risk management practices including:

- **Factoring in time for review:** Include time in your schedule to thoroughly review all documents
- **Using a second set of eyes:** Where possible, have a colleague review your documents
- **Checking for consistency:** Methodically review documents for inconsistent terminology, incorrect clause numbering, and missed cross references
- **Avoiding the use of old documents:** Instead of adapting documents from past matters, draft from a master precedent to ensure accuracy
- **Reviewing and updating precedents regularly**
- **Strict version control:** Make sure you are using the correct version of the document and use consistent naming conventions and strong protocols to track versions
- **Engaging your clients:** Encourage clients to carefully review documents to confirm they reflect their instructions

By embedding these habits into your drafting processes and everyday practice, you can help reduce the likelihood of costly and time consuming mistakes.