

Onboarding of New Clients: Lessons from a Claim

Risk management topics:

General Practice

Practice Management



Glenda Carry

Legal Risk Manager

Overlooking basic onboarding steps can have significant consequences for solicitors.

Recently, Lawcover settled a claim against a solicitor who was alleged to have acted for both a son and his father in preparing a loan deed. The solicitor had previously represented various family members in different matters and was accustomed to providing ad hoc legal advice during informal visits.

On the occasion leading to the claim, the father and son approached the solicitor to formalise a loan deed. The son stated that he had loaned his father approximately \$200,000 several years earlier and wished to have the terms documented, including the initial advance and interest terms. The solicitor prepared a loan deed and provided what was described as a 'draft' version for the parties' review and discussion. The solicitor stated that he had verbally advised the son to seek independent legal advice on the document.

No further communication occurred until years later, when the father passed away and the son sought to enforce the deed. It became apparent that the draft deed had never been finalised or executed. Critically, the draft deed lacked the required attestation clause as stipulated by section 38 of the *Conveyancing Act 1919*, which mandates that a deed must be signed, sealed, and attested by at least one witness, who is not a party to the deed.

The son claimed against the solicitor alleging the solicitor acted for both the father and the son, acted in a position of conflict and had breached their duty of care by:

- Failing to advise the son to seek independent legal advice; and
- Failing to inform both the father and son that the deed was merely a draft and needed to be finalised and executed in accordance with section 38 of the *Conveyancing Act 1919* to be enforceable.

Onboarding of New Clients: Lessons from a Claim

The solicitor contended that he acted solely for the father and asserted that the son had been orally advised to seek independent legal advice. He acknowledged that the deed lacked the attestation clause but maintained that, as it was only a draft, the clause would have been added to the final version. There was no evidence to support this on the file nor could the solicitor recall if this had been explained to the father and son. The solicitor accepted that he had not followed up to conclude the matter. Lawcover ultimately settled the claim.

Risk management tips:



– Identify the client:

When approached by multiple parties, ensure clarity regarding who the client is and formalise the engagement with a written retainer



– Written confirmation:

If providing a draft deed and recommending independent advice, document this in writing and outline the next steps



– Follow up:

Diarise the matter for follow up to ensure the matter is progressing and not left unresolved

