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Lockton Solicitors

Guide to Capturing Client Instructions



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Introduction

What we can do to help prevent complaints and claims

Why is it so important to capture client instructions clearly

What information should you record when capturing instructions

What to do next

Introduction

One of the most common causes of claims against law firms is a failure to follow a client's instructions.

When we talk about capturing client instructions, we are referring to the need to clearly record all instructions that we receive from our clients, including any changes to those instructions as a matter progresses.

Firms can take a number of simple steps to help prevent claims of this type. This can then help to avoid complaints from clients and / or claims being made.

As a consequence less fee earner time will then be spent having to deal with issues arising, leading to improved morale, a better claims experience for firms and less money being paid out on claims by insurers.





Introduction

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Why is it so important to capture client instructions clearly

What information should you record when capturing instructions

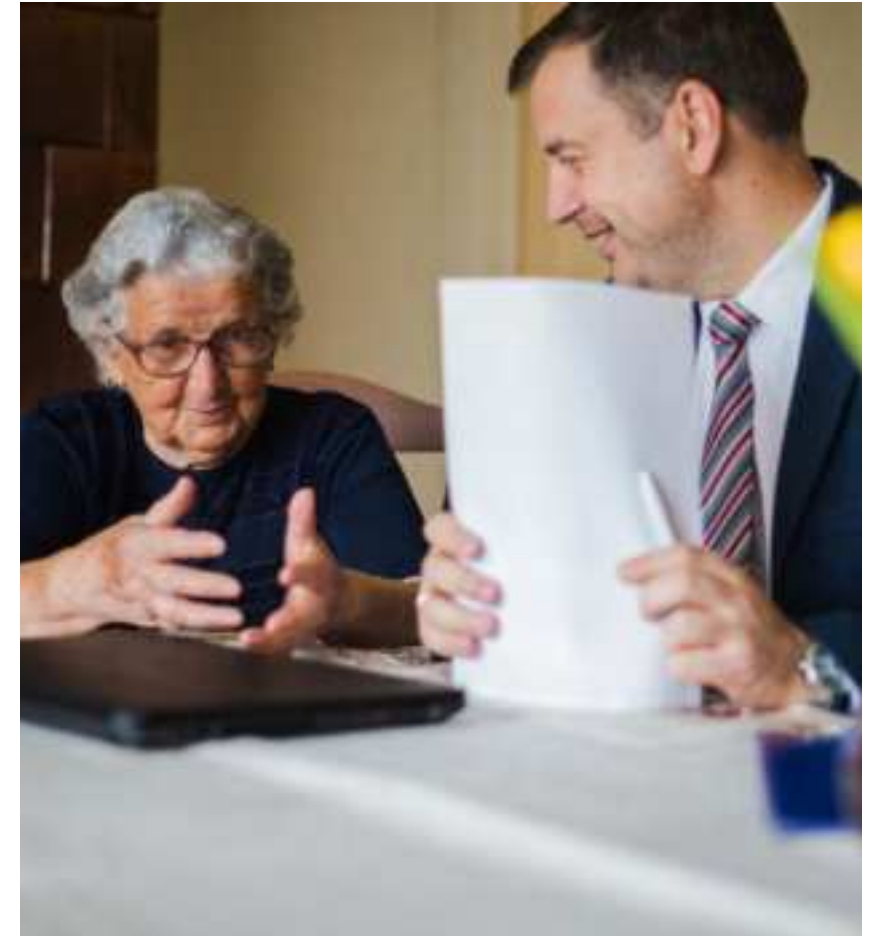
What to do next

What we can do to help prevent complaints and claims

All firms should put in place a policy for capturing client instructions and make this available to all relevant staff.

The policy should set out the process that employees should follow when capturing client instructions and stress the importance of doing so.

The policy should also set out the information that employees must record when taking instructions (including any subsequent changes to those instructions), and the implications for both the firm and employee if they do not follow the policy.





Introduction

What we can do to help
prevent complaints and claims

Why is it so important
to capture client
instructions clearly

What information
should you record when
capturing instructions

What to do next

Why is so important to capture client instructions clearly

It's extremely important that we do this for a number of reasons:

- So that we understand exactly what the client wants to achieve and so that the right advice is given.
- It enables the Firm to allocate the work to the right department and fee earner with appropriate expertise and experience, or alternatively to enable appropriate supervision to be provided to a less experienced fee earner.
- This also assists the Firm to comply with the competency requirements set out in the Code of Conduct for Firms. In particular, rule 4.2, which states that Firms must ensure that the service provided to clients is competent and delivered in a timely manner, and takes account of the client's attributes, needs and circumstances.
- Principle 7 of the SRA Standards and Regulations requires you to act in the best interests of your client. In order to do so, as a starting point, you will need to obtain clear instructions from your client.
- It also enables the Firm to refuse instructions where it does not have the appropriate expertise or where they fall outside the Firm's risk appetite for work.
- It enables the Firm and the fee earner to evidence, if needed, the exact instructions received from any client.
- The fee earner can use the detailed notes of instructions taken as a point of reference if needed.





Introduction

What we can do to help prevent complaints and claims

Why is it so important to capture client instructions clearly

What information should you record when capturing instructions

What to do next

What information should you record when capturing instructions

All fee earners must record the following information in a file note and place it on the relevant client file: **[Note:** This is a recommendation of the information we consider should be recorded and firms may wish to amend this.]

- The client's initial instructions.
- The client's needs and objectives.
- Details of all instructions received from the client relating to their matter.
- All discussions and telephone conversations with the client and any other party regarding the client's matter.
- Any subsequent changes to those instructions, needs and / or objectives and
- Details of all steps and time-scales that you agree with the client from time to time, either with the client or any other party in relation to the client's matter.
- All matters discussed at any meetings with the client and any other party relating to the client's matter.

You may wish to consider including a summary of the client's instructions in a schedule to your client care letter, which the client can then check, acknowledge and agree.





Introduction

What we can do to help prevent complaints and claims

Why is it so important to capture client instructions clearly

What information should you record when capturing instructions

What to do next

What to do next

We recommend that you take the following steps (if you have not already done so):

- Appoint an appropriate person to be responsible for producing your policy.
- Prepare your policy: The policy should detail how staff should deal with enquiries received from potential clients and the process for taking a client's instructions. It should also list the information that should be recorded and the time-scales for doing so. The policy should explain the importance of recording instructions, including subsequent changes, and the implications for both the firm and staff of not complying with the policy.
- Review your existing standard client care letter(s) to ensure that it / they allows for a summary of the client's instructions to be inserted.
- Amend your File Review Checklist to include a check that instructions are clearly recorded, if not already on your Checklist.
- Training: Training should then take place for all relevant staff on the policy, ideally at the time of staff induction and then a regular refresher. Training should cover the processes to be followed, explain the importance of following the policy and the potential risks to the firm of non-compliance.
- Policy review and monitoring: Appoint an appropriate person to be responsible for reviewing and auditing the processes that are put in place, to ensure that they work effectively. Any changes should be notified to the person responsible for compliance. The person appointed should keep appropriate records documenting the review and audit process.





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