

# Reviewing Risk Management Strategies with an Audit Checklist

Don't wait for the worst to happen...  
use this audit checklist to determine  
and monitor whether your practice is  
"at risk" of a negligence claim.





## Introduction

This audit checklist is a risk management tool for legal practitioners to determine and monitor whether their practice is “at risk” of a negligence claim arising from poor management of the retainer or the matter.

The checklist does not seek to audit the technical quality of the legal work undertaken. Rather the audit is directed at the way in which the work has been performed regarding issues such as retainer management, client communication, supervision, file management and useable trail (i.e. record keeping).

This publication concentrates on these issues at this time because analysis of our claims has shown that failures in each of these areas are responsible for the vast majority of negligence claims brought against the practitioners insured with LPLC.

LPLC’s experience shows that practitioners are often unaware they are not managing these issues properly or indeed are unaware these are issues that can and should be managed.

Hence this audit is a good place to start to inform or remind yourself of problem areas, to determine the effectiveness of your current approach and to identify what steps may need to be taken to reduce the risk of a claim.

## How to use this checklist and get the audit process going in your firm

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### 1. The checklist is designed to guide you through a review of a file in terms of:

**A Retainer Management**  
(includes setting up, varying and closing the retainer and managing the client's expectations throughout);  
and/or

**B Matter Management**  
(includes delegation and supervision, communication, record keeping and file and time management).

You may choose to review one or both areas.

### 2. The checklist requires you to answer yes or no to the questions raised.

A significant number of 'no' answers on a file or group of files will highlight that your firm needs to review its risk management strategies as it may be "at risk" of claims in the future.

### 3 To start the audit process:

- Choose the area within your firm you wish to audit (e.g. by practice area, matter type, department, workgroup, practitioners according to position or level of experience).
- Decide the number of files to be audited from each practitioner in the audit area – we suggest five files per practitioner, but subject to time available and type of files.
- Select the files randomly and include both open and closed files.
- Fill out a checklist for each file - you may photocopy the checklist in this booklet or copy the checklist from the risk management section on our website at [www.lplc.com.au](http://www.lplc.com.au).

### 4 Review the results

- Review the completed checklists for 'no' answers to identify significant issues. In particular look for any patterns of 'no' answers within the audit area or for each practitioner etc.
- Consider possible adverse consequences if these answers or patterns continue (i.e. assess the risk of a claim if nothing changes).
- Decide the actions that need to be taken by whom and by when to reduce your risk.
- Set a date to review implementation or repeat the audit if appropriate.

## If you would like to discuss on a confidential basis:

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- the audit process;
- your results; or
- your proposed risk management strategies in response to the audit

**please feel free to contact us on tel. 9670 2001 or by e-mail at [sharon@lplc.com.au](mailto:sharon@lplc.com.au).**

Firm: \_\_\_\_\_

Practice Group: \_\_\_\_\_

Operator: \_\_\_\_\_

Supervising Principal: \_\_\_\_\_

File Name & Number: \_\_\_\_\_

Status Of File:  Open: Active/Inactive  Closed

Date Of Review: \_\_\_\_\_

Reviewer: \_\_\_\_\_

Scope of this review  First review; or

Follow up to previous review of   
date

Part A: Retainer Management

Part B: Matter Management

## Retainer Management

### Client/Matter Screening

1	Is the matter in an area of law in which the firm currently practices extensively?	Yes	No	
2	Is it clear who the client is (and is not)?	Yes	No	
3	Is there evidence that a conflicts check has been conducted?	Yes	No	
4	In other respects does the client/matter comply with firm policy and procedures about matter acceptance? (e.g. areas of work, high risk clients/matters, approval/sign off on acceptance, credit checks etc.)	Yes	No	
5	Has a decision to decline to act for a party been communicated in writing?	Yes	No	N/A
6	Has there been a clarification in writing to another party (e.g. unrepresented or closely connected to the client) that the firm is not acting for them?	Yes	No	N/A

### Service Team Selection

7	Has the person handling the matter handled similar matters before?	Yes	No
8	Is the partner/principal supervising the matter unrelated to the client (i.e. not a relative or business associate)?	Yes	No

### Retainer Set Up

9	Are the terms of the retainer with the client in writing?	Yes	No
10	Are the following items included in the written retainer:		
	• Confirmation of the client's instructions?	Yes	No
	• What the solicitor will do (i.e. scope of work)?	Yes	No
	• What the client will do?	Yes	No
	• <b>If the retainer is limited, the consequences and risks to the client of the limitation?</b>	Yes	No
	• The identity of the supervising principal/service team.	Yes	No
	• Costs disclosure (i.e. fee/disbursement estimate - whether or not required by s. 86 of the Legal Practice Act)?	Yes	No
	• Reporting and billing arrangements/frequency.	Yes	No
	• Any time limits applicable and the consequences if missed?	Yes	No
	• Client's obligation to keep solicitor informed of current contact details and consequences if does not?	Yes	No
	• The basis upon which the retainer may be terminated?	Yes	No

11	Is client's acceptance of the terms of the retainer evidenced in writing?	Yes	No	
12	Is it clear when the retainer commenced?	Yes	No	
13	Is the solicitor acting for only one party or interest in the matter or transaction?	Yes	No	N/A
14	In all other respects is there compliance with the firm's matter opening procedures? (e.g. matter form is signed off by a principal, logged and numbered in the matters register etc.)	Yes	No	

### Variation of Retainer

15	Is there timely communication with the client about any changes in the terms of the retainer? (e.g. as to scope, fee estimate, personnel etc.)	Yes	No	N/A
16	Have the changes been evidenced in writing?	Yes	No	N/A
17	Is the client's acceptance of these changes evidenced in writing?	Yes	No	N/A

### Billing

18	Have bills been rendered and, if so, are they consistent with the retainer (or variations) in terms of amount and frequency etc.?	Yes	No	
19	Are bills being paid in full and on time?	Yes	No	N/A
20	Are any client queries or dissatisfaction over costs/billing being handled appropriately and by an appropriate person?	Yes	No	N/A

## Termination of the Retainer

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*If the retainer has been completed or terminated prematurely proceed to question 21.*

*If the retainer is still on foot proceed to Part B.*

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- 21 On completion or termination did the solicitor promptly and before closing the file:
- |   |     |    |     |
|---|-----|----|-----|
| • Write to the client either confirming that the matter was at an end or the retainer terminated?   | Yes | No | N/A |
| • Render a final account (or advise client nil owing)?  | Yes | No | N/A |
| • Account for any money held in trust?  | Yes | No | N/A |
| • Spell out any outstanding issues requiring attention and by when, including advice on any applicable time limit and the consequences if missed?   | Yes | No | N/A |
| • Where the matter involved a deadline for the exercise of an option or the renewal or registration of a document, spell out who is responsible for exercising the option; renewal or registration? | Yes | No | N/A |
| • Return all original documents to the client?  | Yes | No | N/A |
| • Otherwise account for any other original documents on the file?   | Yes | No | N/A |
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- 22 If the retainer was terminated prematurely (whether by client or firm) was appropriate consideration given or arrangements made in relation to the following:
- |   |     |    |
|---|-----|----|
| • Professional liability assessment?          | Yes | No |
| • Appropriate notice to client and/or Court?  | Yes | No |
| • Payment of costs?                           | Yes | No |
| • Retention of copies or lien over documents? | Yes | No |
| • Timely release of file to another firm?     | Yes | No |

## End of Part A

Part  
**B**

## Matter Management

### Delegation & Supervision

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23	If the file has been delegated, was the delegation appropriate to the delegate's capability, workload and development?	Yes	No	N/A
24	If the file has been delegated, is there evidence of appropriate partner supervision:			
	• At the outset of the matter?	Yes	No	N/A
	• At critical junctures?	Yes	No	N/A
	• Throughout the entire matter?	Yes	No	N/A
25	If the file has been transferred within the firm, were any of the following protocols observed?			
	• Written "hand over" memo prepared (dealing with strategy, unresolved issues, critical dates and next steps)?	Yes	No	N/A
	• File organised and up to date at time of transfer?	Yes	No	N/A
	• Client involved and consulted in approving and meeting new lawyer?	Yes	No	N/A
	• Cost implications (i.e. no duplication) discussed with the client?	Yes	No	N/A
26	Whether or not the file was delegated, is there otherwise compliance with firm policy and procedures regarding quality assurance? (e.g. two partner sign off, approval of opinion committee, regular file review etc.)	Yes	No	N/A

### Communications and Record Keeping

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27	Are the client's original instructions clearly documented?	Yes	No	
28	Are any changes or updates to instructions clearly documented?	Yes	No	
29	Are special instructions, such as settlement instructions, obtained and confirmed in writing?	Yes	No	N/A
30	Does it appear the operator makes file notes of all attendances (personal, telephone, voicemail etc.)?	Yes	No	
31	Do file notes bear the following characteristics:			
	• Dated, including the year?	Yes	No	
	• Identity of the author?	Yes	No	
	• Set out how long attendance took?	Yes	No	
	• List who was present?	Yes	No	
	• Legible?	Yes	No	
	• Set out substance of advice and/or who is to do what by when?	Yes	No	
	• Can be considered a note to file (meaningful to someone else) rather than a note to self (meaningless to anyone else)?	Yes	No	

32	Are there letters of advice/progress reports to the client:			
	• At the beginning of the matter?	Yes	No	
	• At regular intervals?	Yes	No	
	• At critical junctures?	Yes	No	
33	Are significant correspondence or memoranda sent or received by the solicitor copied to the client?	Yes	No	
34	Have any changes in the legal strategy for completing the matter been confirmed in writing to the client?	Yes	No	
35	Have any changes in the time frame for completing the matter been confirmed in writing to the client?	Yes	No	
36	Has there been a good response time to:			
	• Telephone calls?	Yes	No	
	• Face to face requests?	Yes	No	
	• Correspondence?	Yes	No	
	• E-mails?	Yes	No	
37	Does the file contain copies of all communications? (e.g. letters, faxes, e-mails etc.)	Yes	No	
38	Are all drafts clearly marked and in numerical/date order?	Yes	No	N/A
39	Is there every reason to believe the client is satisfied with the job?	Yes	No	
40	Does it appear any client dissatisfaction was dealt with by an appropriate person or in accordance with the firm policy?	Yes	No	N/A
41	Does it appear any client dissatisfaction was resolved satisfactorily by the firm?	Yes	No	N/A

## File and Time Management

42	Is the file well organised (chronological, divided into separate sections)?	Yes	No	
43	Is there evidence that filing is up to date?	Yes	No	
44	Has the operator used any checklists, precedents or other performance tools in conducting the matter?	Yes	No	
45	Is there evidence that documents were cross checked or proof read before being presented to the client for execution?	Yes	No	
46	Has the file progressed (or been completed) within a reasonable time?	Yes	No	
47	Has the file been proactively managed not reactively? (e.g. file reviews; actively pursuing issues)	Yes	No	

48	Has a system for monitoring deadlines been used? (e.g. is there evidence of an individual and/or centralised diary system and a back up diary system)	Yes	No
49	Has any deadline monitoring system been used for limitation periods and other "drop dead" deadlines?	Yes	No
50	Has any deadline monitoring system been used for reminder of steps to be taken on the file?	Yes	No

## End of Part B

## Reviewing the Results

*Review the completed checklists for 'no' answers to identify significant issues.  
In particular look for any patterns of 'no' answers within the audit area or for each practitioner etc.*

Overall is **Retainer Management** satisfactory?

If not, please comment on concerns.

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Overall is **Matter Management** satisfactory?

If not, please comment on concerns.

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Is the file otherwise completely satisfactory?

If not, please comment.

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- Consider possible adverse consequences if these answers or patterns continue (i.e. assess the risk of a claim if nothing changes).
- Decide the actions that need to be taken by whom and by when to reduce your risk. Set a date to review implementation or repeat the audit if appropriate.

Have any outstanding matters from a previous review been satisfied?

If not, please list the outstanding matters.

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# Risk Management Audit Checklist

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LEGAL PRACTITIONERS  
LIABILITY COMMITTEE