LEGAL PRACTITIONERS' LIABILITY COMMITTEE

Litigation a la carte

Presenter's Workbook

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March 2015

Contents

Introduction

The *Litigation a la carte* video explores issues relating to client selection, retainer management and client management in the content of a small businessman with an urgent litigation matter. These materials are designed to be used with the video.

The themes raised by the video are:

- retainer management including :
    - client selection
    - matter selection
    - managing a limited retainer
- client management including:
    - client doing some work
    - client changing instructions
- record keeping including:
    - file notes, retainer letters and administration of the file.

Retainer management basics

What are some of the things you think about when you hear retainer management?

A critical part of managing any retainer effectively is setting it up.

Before accepting a retainer ask yourself 'should I act for this client in this matter at this time?' In answering that question you should consider the following things.

- Who is the client?
- Can I act – is there a conflict?
- Do I have the time and the resources?
- What will the scope of the retainer be?
- Who can I delegate it to?
- How often and by what means will I communicate with the client during the retainer?

There is more to retainer management than simply complying with the cost disclosure requirements in legislation. Once you accept the retainer some of the things to manage include:

- the retainer letter
- the cost disclosure
- the cost agreement
- when to terminate the retainer
- how to terminate the retainer.

Litigation a la carte

The video scenario

Restaurateur Frank is taken on as a new client by solicitor Louisa. The matter is a partnership dispute already partly litigated. The client referral comes from his de facto partner, Carly, who is already a client of the firm. Frank is a difficult client who changes his instructions, particularly regarding the settlement. When the outcome does not meet his expectations, he refuses to pay his bills.

You can play the scenario all the way through and discuss the questions below at the end or pause at the indicated points to discuss what has just occurred.

Scenes 1 and 2 - Hallway discussion and initial briefing - 0:00 to 5:07

Louisa and Carly have a hallway discussion about the situation with Louisa asking Carly to organise a meeting with Frank. There is then an initial meeting with Louisa, Frank and Carly.

What has taken place in these first two scenes?

Are you uneasy about the retainer/situation so far?

- Carly explains to Louisa the problems Frank is having with his business partner in the restaurant, Robert.
- Frank is bossy, opinionated and does not listen.
- Frank tries to tell Louisa what he wants rather than listen to advice about what he needs. He wants the agreement he previously signed overturned.
- Louisa makes some recommendations to Frank about how to proceed with the matter including having the court appearance in three days adjourned to give them time to settle. She explains she will send him a costs estimate.
- Frank comments that his cash flow is not very good at the moment – signs of trouble to come.

Scenes 3, 4 and 5 - Post-court appearance discussion, strategy planning and final meeting - 5:08 to 7:29

Louisa, Frank and Carly discuss the settlement reached. There is a meeting a week later between Louisa and Frank to discuss why Frank was changing his settlement offer and what he was now prepared to offer. There is a final meeting between Louisa and Frank where he states his need for the fees to be deferred.

What has gone wrong?

More specifically, what did Louisa do wrong?

- Louisa did not recognise Frank as a problem client who will not listen or follow advice.
- Louisa did not assess all the documents and issues, consider for herself what the real issues were, how best to deal with them and the consequences of each option.
- Louisa failed to confirm in writing all of Frank's options and the possible risks of each option.
- Louisa also failed to deal upfront with the issue of her fees in the face of his reluctance and stated inability to pay.

Final scene - Claims solicitor and the allegations - 7:30 to 10:10

Louisa meets with Anne, the claims solicitor, about Frank's allegations against Louisa and her firm.

What was the claim against the solicitor?

How is the claim resolved?

- Frank says Louisa wrongly advised him to file the application to have the agreement set aside.
- Louisa says she didn't see Frank until later, after the application was filed but her file doesn't confirm that.

Take 2: What would have made the difference? - 10:17 to end

Ask the audience the following question before playing Take 2

What could Louisa have done that would have made a difference to the outcome?

'Take 2' suggests some possible strategies for dealing with this situation. It is about taking a step back and considering issues of client and matter selection rather than rushing into the matter just because the client is on your doorstep.

Louisa meets with Ruth, a partner in her firm, after her initial meeting with Frank and Carly. Louisa explains her concerns about Frank as a potentially difficult client and his possible inability to pay.

Practitioners who get sued by difficult clients usually say afterwards 'I knew that client was trouble right from the start' yet did not take any steps to manage the client's behaviour or expectations. They failed to listen to their intuition and proceeded as normal.

Louisa thinks Frank:

- is a temperamental chef
- is not a good listener
- probably cannot afford a lawyer or does not think he needs one
- does not like to part with his money.

Ruth counsels Louisa to think about whether:

- Frank is the right client strategically for the firm
- she has time and resources to take the matter on at such short notice.

The agreed strategy is to write to Frank:

- confirming their discussion
- setting out Louisa's recommendation to adjourn the Friday hearing and try to negotiate an outcome
- giving him a sense of why he needs her advice
- giving him a cost estimate
- advising him it is firm policy to obtain costs upfront.

Actual scenario

This scenario is based on the decision of *Claudio Grizonic v Maurice Blackburn Cashman Pty Limited* [2008] NSWSC 76 with some poetic license from LPLC!

In the actual case, the law firm stopped acting in late January. Receivers and managers were appointed on application from the client's business partner. The client brought proceedings against the law firm alleging he incurred significant costs which he should not have incurred. These costs were as a result of the appointment of receivers and managers to the restaurant and a trustee to sell a property jointly owned by the client and the business partner.

The client alleged that in early January the law firm had given him wrong advice about whether heads of agreement made in December were binding. He said he was told to file a notice of motion in proceedings that had been commenced in the Equity Division in December, seeking orders to set aside the heads of agreement. The Court found no such advice was given.

The practitioner gave evidence that he could not remember the first meeting and did not recall whether the client or only his girlfriend was present. The practitioner thought that, given the content of his file note, it was just a preliminary meeting for information gathering purposes, with no retainer created, or instructions or advice given. Barr J believed the solicitor (see [58]).

His Honour thought the client was not a man who would listen carefully to advice or give careful consideration to what he should do (at [73]). It was also clear that the client had fabricated some diary entries of meetings with the practitioner in January (see [86]).

His Honour found there was no obligation on the practitioner to give any advice to the client at the meeting on 7 January before the notice of motion was filed.

While successful in this case, the firm ran up substantial costs and caused angst for various people within the firm because the file note did not say who was present and the client was not properly screened or managed.

Client management: emotional, unstable, bossy client

How would you describe Frank?

What was your initial reaction to Frank?

Would you have been worried about taking on Frank?

Frank is a know-it-all small businessman who likes to be in control of things and does not want to pay legal fees for work he thinks he does not need. Consequently, he has done some of the work himself and does not tell Louisa everything she needs to know. He is also happy to change his mind when he does not get what he wants. He does not appreciate or understand Louisa's advice and does not think he should have to pay the fees.

What are the risks with a 'Frank'? How would you manage a 'Frank'?

Does your firm have a client selection policy?

How would Frank be perceived under the policy? (Frank was a referral from an existing client of the firm and he is a businessman.)

What are the selection criteria – does it just relate to business type?

See LIJ Jan/Feb 2015 issue 89 page 46 *The ethics of choosing clients* by Rufus Black for discussion on ethical questions of client selection.

Say 'no'

The simplest risk management lesson is don't act! Practitioners can say 'no'. They do not have to accept a retainer. For every new matter ask whether you should act for this client, in this matter, at this time.

Claims often arise because a practitioner's better judgment is clouded by a natural inclination to assist and improve the client's position.

Avoid the trap of becoming responsible for the client's predicament. Practitioners are not therapists or social workers. Irrespective of the client's demands for immediate action, there are situations where the practitioner must say 'no' including where a claim clearly has no merit, a practitioner lacks the necessary skill or experience to handle it, or if the client wants things done in an unrealistic time frame or inappropriate manner (see *May v Mijatovic* [2002] 26 WAR 95).

Use the retainer as a shield

Retainers are contracts and when carefully drafted, can limit the possibility of dispute. At the most basic level, the retainer identifies the client and prescribes the services expected of the practitioner.

Your retainer should set out, in writing and in simple terms, what you have been retained to do and the basis on which you have agreed to act.

This could be limited, in the first instance, to obtaining the file from your predecessor, after which advice will be given as to the merits of the underlying matter.

Where a practitioner is instructed by multiple parties, the retainer agreement can anticipate and avoid or limit potential conflicts. It should specify from whom instructions are to be provided, to who the practitioner is to report, who is liable for costs and whether that liability is joint or several.

Issues such as sharing confidential information and access to the documents in the event of dispute or after the retainer is terminated can also be addressed. Where a practitioner is acting for two clients, their legal professional privilege is joint and both clients must consent to its waiver. This issue could be addressed in the retainer to avoid later disputes over documents and your continued involvement in the dispute as a stakeholder.

The lawyer advises, the client decides

Preferably your advice will be in writing, as will the client's decision.

Professional Conduct and Practice Rule (Vic) 12.2 requires that a practitioner must assist their client to understand the issues in the case and the client's possible rights and obligations sufficiently so as to permit the client to give proper instructions. You give the client the options, the advantages and disadvantages of each and possibly a recommendation, but ultimately they must decide.

As we saw with Frank, he did not want to decide and he backtracked after making a decision.

Communicate key issues

Key things to communicate with the client include costs and changes to costs estimates, changes in personnel and evidence obtained that goes for or against their case. Some key issues like evidence and the progress of the case need to be communicated face to face. Do not underestimate the value of face to face communication.

Communicate about costs

Where possible, obtain money up front and send accounts on a regular basis, especially in litigation matters. Given Frank's aversion to paying legal fees, asking him to put money up at the start might have assisted in getting him to commit to doing what was advised. An

account is a reality check – it reminds the client that legal work is expensive and a professional service that must be paid for.

Firms that have changed their billing practice from one bill at the end of the matter to regular monthly invoices, even if just for the client's information and not necessarily to be paid at the time, have found clients are less likely to complain about paying the bill at the end of the matter. Keeping the client informed about how the costs are accumulating and what work is being done goes a long way to managing the client's expectations and the likely outcome.

Taking a matter over part way through

In the scenario, Louisa came in part way through the dispute with a notice of motion hearing at short notice and Frank is trying to overturn an agreement he made three weeks ago. Frank also has a barrister friend 'help him out' which is similar to the changing lawyer situation.

The issues that arise when taking over a matter part way through are equally relevant for transfers of files from one firm to another as well as from one practitioner to another within the same firm.

Very often practitioners do not acquaint themselves with what has happened throughout the matter and assume what was done before was done properly. The cost of going back and reviewing the matter from the start can often be prohibitive. There are often urgent things to be done on the matter once the practitioner receives the file with little, if any, time to revisit the matter.

The problem is relying on the previous practitioner having done the right thing. We have had cases where crucial evidence or causes of action were missed because the previous practitioner thought certain facts were not relevant.

If the client is changing practitioner it is prudent to consider why. Did they not like the advice they received, for example their case is hopeless, or were they too difficult to deal with and the previous practitioner would not do what they wanted, or could they not afford the legal fees? With any of these scenarios consider whether the client is worth taking on.

In some instances, it can be a matter of the right personality and approach enabling a practitioner to manage a client effectively when another practitioner might not have been able to. However, you have to be wary not to fall into the trap of being flattered by the client and not really understanding what you are getting yourself into.

Experienced practitioners tell us they have a sixth sense about potentially difficult clients and come up with a reason why they cannot act for them, referring the clients elsewhere. One practitioner told us he counsels fellow partners about not acting for 'Franks' as he has seen the damage they can do in other firms.

Limited retainers

In this scenario Louisa started with a limited retainer. Frank only wanted her to go to court on Friday to have the previous agreement overturned.

Is there anything wrong with having a limited retainer?

What can go wrong with limited retainers?

- Practitioners fail to document the retainer well enough, leaving room for the client to argue later certain advice that was not given, should have been given.
- The practitioner may document the retainer at the start but when retainer creep occurs, perhaps as further issues become apparent, they fail to update their documentation. This provides the opportunity for the client to later argue the retainer had changed more than was assumed by the practitioner.
- Practitioners do not always ensure they get the full picture of what is going on from the client, leaving situations where important information is not given to the practitioner.
- The practitioner attempts to stick strictly to the limited retainer and consequently misses a closely related issue that is arguably within scope.
- There is scope for misunderstanding between the client and the practitioner as to who is doing what, with allegations later that the practitioner missed an issue.

Documenting the retainer

Louisa did not document the limited retainer giving Frank scope to later argue that what Louisa did was not what he had asked. He alleged her retainer was much broader and required her to advise him that the agreement was binding. He said that the strategy to set the agreement aside was flawed and it was her fault.

From Louisa's point of view, the matter happened in a rush, the client was very assertive and he came in with specific instructions. She did have her blinkers on and did not advise Frank on all of the relevant issues.

Limited retainers can cause various problems. Here are some other examples.

Examples

1 Redraft MOU

A firm was asked to review a draft memorandum of understanding that had been prepared by the client to replace a now expired memorandum. The firm did what it was asked to do.

Months later one of the parties sought advice about restructuring. The restructuring exercise revealed the structure underpinning the memorandum was not tax-effective. The client complained the firm should have advised on that problem when asked to review the memorandum.

The firm said it had not been asked to go behind the memorandum and look at the structure; rather, it was asked to advise only on the wording of the new memorandum. The structure had already been set up by previous practitioners. However, the underlying assumptions were flawed, resulting in the memorandum not achieving what was intended. The client argued that the firm should have satisfied itself about those assumptions in order to give the advice. This was clearly not what the firm thought it was retained to do.

2 Review employment agreement

An employment agency instructed a firm to act in a limited capacity relating to the purchase of another agency. At the end of the transaction the firm was also asked to ensure that certain employment agreements conformed with the sale of business agreement it had just entered. The firm reviewed the agreements and made some amendments. It was subsequently discovered that some of the employees were not being paid the appropriate award rates.

The client alleged the firm should not have approved the employment agreements where the conditions did not meet award standards. The firm said they had been specifically instructed not to undertake any due diligence relating to the purchase of the business as the client intended to do it. They believed the later instruction was confined to ensuring the employment agreements complied with the client's obligations in the sale agreement and nothing more. The instructions and retainer were not adequately documented.

3 Slipped between the cracks

While in some cases a firm effectively specifies the matters it is not advising on such as tax, it can still get into trouble when advice from other experts is received by the firm and then not acted on or clarified with the client.

A client asked a firm to establish a new entity and advise on the transfer of assets into the new entity. The firm specified what it was retained to do and early in the transaction recommended the client obtain independent accounting advice about CGT, stamp duty, income tax and GST. The firm received a short email from the client's accountant later stating GST was payable on the sale of the assets. The firm took no action relating to that advice and made no recommendations as to what steps should be taken.

The client later argued the firm should have advised that a 'plus GST' clause be added to the agreement. The firm said they were not retained to deal with the tax issues. The practitioner handling the matter went on holidays the day after the advice was received from the accountant and, although he was back in the office before the matter settled, the issue seems to have been overlooked by everyone.

4 Acting for borrower and lender

In June 1995, the practitioner acted on what he described as an 'intra-client' loan − the practitioner had probably acted for lender and borrower in a loan transaction.

The loan for $565,000 was to be repaid in 60 days with interest. It was secured by a debenture charge over the borrower company's assets and an assignment of $1 million worth of shares in an associated company when those shares were issued. The lender was anxious to ensure the loan was secure and the practitioner allegedly assured the lender it would be.

The lender was persuaded to borrow funds to make the loan and the loan agreement drafted by the practitioner provided for payment of all the lender's holding costs, interest and an attractive facility fee of $56,000.

The borrower paid the first installment of interest and then nothing else. The date for repayment was extended several times and the lender was allegedly warned by the practitioner against taking any 'precipitous action'. However, in June 1997 when the lender finally insisted the practitioner commence recovery proceedings:

- the practitioner said he would not act against his other client, the borrower
- the $1 million share issue had never been made and the substituted shares were worthless
- the debenture charge had not been registered and by that time, the company's major assets had evaporated.

By way of defence, the practitioner maintained his retainer was limited to preparing the necessary documents in respect of a 'done deal'. Whether this was the case, the lender's principal allegation was that the practitioner had also acted for the borrower (and the company director of the borrower) in this transaction in an obvious conflict of interest, in circumstances where the borrower's interests were preferred over the interests of the lender.

The practitioner's file was poor and showed:

- no attempt had been made to document any limited retainer, if there was one
- no investigation into the company was made or suggested
- no guarantees were obtained, with the practitioner saying 'it would be normal to have guarantees but X (company director of the borrower) hates personal guarantees and in the circumstances I don't feel it is necessary'

- the security provided was unsatisfactory and inadequate, the shares were never provided and the practitioner failed to register the deed of charge for two years.

It was not clear who the practitioner was acting for. The practitioner's files and accounts mixed all the issues up but it did appear his first contact was with the company director of the borrower rather than the lender. The lender said the practitioner had told him 'X (company director of the borrower) has asked me to draw the documents and I'll be acting for both of you'. This was denied by the practitioner but there was certainly no other practitioner acting in the transaction. The borrower considered the practitioner to be its lawyer. It was not difficult for the lender to make a case that the practitioner was acting for both parties in a position of conflict.

Some major risks for limited retainers are:

- practitioners not documenting the retainer well enough, leaving room for the client to argue later that certain advice that was not given should have been given
- practitioners may document the retainer at the start but when the retainer creeps they fail to update their documentation, leaving it open for the client to argue later that the retainer had changed more than was assumed by the practitioner.

Risk management strategies

When it comes to limited retainers, practitioners need to think laterally and consider what they are **not** asked to do as well as what they are asked to do.

Clarify the extent of any limited retainer, confirm it in writing and where necessary, say what the firm is not going to do.

Where some of the work is being undertaken by the client or by another advisor, confirm that in writing. You may also need to inform the client of the risks of not doing the work.

Closely monitor the retainer as the matter progresses so if things change the retainer can be updated in writing.

Client management

Clients who do some work themselves (or with the help of a friend or another professional advisor), change instructions repeatedly or both are cause for concern to practitioners.

Clients doing some work themselves

Clients doing some of the work themselves are often the ones who want to give you a limited retainer. The comments about limited retainers are therefore also applicable in client management. Documenting who is doing which task is very important as we have seen claims where the client has not performed a task they said they would.

It is also important to explain to the client what they need to do and the consequences of not doing it properly in a timely manner. Failing to do so may result in a dispute with the client arguing they did not appreciate the importance of the task and had they been so advised, would either have never taken it upon themselves to perform the task or done it differently.

A practitioner contacted LPLC with the following scenario which illustrates this situation. He had acted for the client when they purchased a business five years earlier. During the matter, the paralegal who worked with the practitioner was told by the client that the client would deal with the vendor in relation to employee long service leave entitlements and the firm did not need to manage that issue or worry about it at settlement. Five years later, when the client went to sell the business, the employees said they had not been paid their entitlements. The previous vendor had agreed with the client that he would pay the employees but had not done so.

The client had not managed that part of the matter well and alleged the practitioner should have told them what they needed to do. In his own defence the practitioner said he had not realised the paralegal had let the client handle the matter and had he known he would have given the client additional advice.

Clients changing instructions

Clients who keep changing instructions are difficult to handle. The best course of action is to keep confirming their instructions and putting your advice in writing. It is important to explain the possible consequences of their changing instructions. If they refuse to accept your advice, you are entitled to terminate the retainer.

In Victoria the Professional Conduct and Practice Rules 2005 entitle a practitioner to terminate a retainer 'for just cause, and on reasonable notice to the client' (Rule 6.1.3). There could be 'just cause' where there is a breakdown in the relationship because the client is not taking your advice. See LIJ Jan/Feb 2015 issue 89 page 42 *The client from hell* by Michael Dolan.

Record keeping

Louisa was exposed in this matter because she did not properly document the retainer. Documenting and updating retainers can be difficult given the tight timeframes practitioners sometimes have to work to. This was an urgent matter and Louisa was thrown in the deep end.

She also did not have adequate file notes, illustrated by the uncertainty as to who was at the first meeting. Frank maintains he was at the meeting on the 7 January, while Louisa's recollection was she just had a preliminary discussion with Carly.

Another documentation problem was the bill issued by the firm. It indicated the retainer commenced on 5 January, while Louisa said she did not see Frank until 13 January and the retainer started on the same date.

We regularly see this problem with the practitioner saying the retainer was only to do 'X' but the account indicates something much broader.

Failing to document what you said or agreed is not necessarily negligent but not doing so makes it much harder to defend a claim. It becomes a case of your word against the client's, who may have a different view of what took place.

The decision of *Hoult v Hoult* [2011] FamCA 1023 is a good example of what can happen when a practitioner does not have a file note. In this case, the wife sought to have her financial agreement with her former husband set aside on the basis that her practitioner did not give adequate legal advice relating to the agreement before she signed it.

The wife's practitioner signed a solicitor's certificate saying she had given the required advice but did not have any file notes of the advice given and did not confirm the advice in writing. The practitioner intended to send a letter confirming her advice when she received the signed agreement from the husband. She did not receive the agreement back from the husband and 'time got away from her' (at [44]).

Murphy J was scathing of the practitioner's failure to make and keep file notes of her advice. His Honour said that, without those file notes, it was a matter of assessing the evidence of the client and the practitioner respectively to determine where the truth lay. His Honour found that the practitioner was not untruthful but her recall was significantly impaired by the elapse of time and that she had seen many other clients in the meantime. The agreement was signed in December 2004 and the hearing was in the second half of 2011. The practitioner could not recall what advice she gave the client about the advantages and disadvantages of signing the agreement. His Honour also found sufficient advice was not given to comply with the relevant provision of the *Family Law Act 1975* and as a result the agreement was not binding. The existence of the signed solicitor's certificate only provided a rebuttable presumption of fact and was not sufficient evidence of advice.

Another case involving no file notes was *Kermani v Gaylard & Ors* [2011] VSC 46. This case involved allegations that the practitioner had told the client there was no risk in her signing

an agreement that refinanced loans made to the client and her husband's family company but which increased the earlier borrowings. The agreement also contained an undertaking to pay by a third party as extra security. The client had previously provided security for the earlier borrowings and by signing the agreement was arguably increasing the risk to that security despite the existence of the third party undertaking.

The case centred around the advice given on a particular day. The practitioner had no note of his advice. The client gave evidence that the practitioner told her there was no risk to her in signing while the practitioner said he told the client her security would still be at risk.

Sifris J did not believe the version of events given by either the client or the practitioner. It had been nearly a decade since the advice was given and His Honour found that the client could not accurately recall what was said, particularly as she had difficulty recalling other events that occurred at the same time. Furthermore, the practitioner's account was equally unreliable.

Sifris J said it was unusual for a practitioner not to make a note and there was no obvious reason why the practitioner would remember what he said to this client at this meeting given all the clients and advice he would have seen and given over the decade. According to his Honour, 'it is unlikely that (the practitioner) would have a clear recollection of the specifics or substance of what was discussed and what advice he gave, without the benefit of a written record, (at [106]).

He went on to make a finding as to what he thought would have been said. He found that the practitioner had not breached any retainer or duty to the client by not pointing out the extent of the risk to the client, because she was aware of that risk.

A relevant factor when considering the adequacy of the advice is the sophistication and experience of the client. A near miss!

Risk management lessons

Client acceptance

The firm should act only for clients that satisfy the firm's business strategy criteria including:

- correct identification of the prospective client
- no conflicts of interest or duties
- no impediment to contractual arrangements with other clients
- no damage to commercial relationships with other clients
- the prospective client's reputation and creditworthiness is acceptable (consider anti-money laundering, anti-terrorism and other compliance issues)
- the client does not otherwise pose any unacceptable risks.

Approval for taking on a new client should involve more than just the responsible partner. In some cases it might be the practice group head, the managing partner, a specific new client review committee or designated business intake personnel.

Matter acceptance

The firm should only accept matters that satisfy the firm's business objectives and meet the following criteria.

- The matter must be within the scope of the firm's practice.
- The firm must have the required expertise and resources to handle the matter and the matter must be within the scope of expertise of the partner responsible.
- The matter must meet any size requirements such as a minimum fee threshold.
- As with new clients, conflicts of interest and commercial relationships must be considered with each new matter.
- The risk profile of the matter must be considered and the matter rejected where the risk is unacceptable. Where the risk is considered high but acceptable, another partner should be appointed to review the work.

For every proposed matter there should be clear protocols to ensure all these factors are given due consideration by someone with appropriate expertise and experience.

Approval for accepting any new matter should be given by the responsible partner/principal. Where significant risk exists, the responsible partner/principal should be able to identify it and there should be a mandatory escalation process whereby a specified partner/partners/committee considers whether the proposed matter should be accepted.

Taking a matter over part way through

When taking over a matter part the way through, think carefully about the reasons and probe the client as to why they are leaving their previous practitioner and coming to you.

Do not take anything for granted. Make sure you know what has happened on the matter before you took it over.

Limited retainer

When it comes to limited retainers, practitioners need to think laterally and consider what they are **not** asked to do as well as what they are asked to do.

Clarify the extent of a limited retainer and confirm it in writing. Where necessary, say what the firm is not going to do.

Where the client is undertaking some of the work themselves, confirm that in writing and in some instances you may even need to confirm the risks of the client not doing the work properly and in time.

Keep an eye on the retainer as the matter progresses so if things change the retainer can be updated in writing.

Client management

Where the client wants to do some of the work themselves, confirm in writing what the client is to do, how it should be done and the consequences of the client not doing the work properly or in time.

Where your client changes instructions or refuses to accept your advice, confirm the instructions and your advice in writing, spelling out for the client the possible consequences of changing instructions. If the client refuses to accept your advice you should consider terminating the retainer.

Record keeping

Make a comprehensive file note of all attendances on your client, whether in the office or elsewhere.

Your file note should:

- be dated
- identify the author
- record the duration of the attendance
- record who was present or on the telephone
- be legible

- record the substance of the advice given as well as the client's response and instructions
- be a note to the file rather than a cryptic note to yourself.

Confirm all advice in writing to the client.

Administration of the file, especially invoices/accounts/bills sent to the clien,t should be checked to ensure they accurately reflect the retainer.