

## Risk video bites – Personal injuries litigation

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As a personal injury lawyer, it is important to manage not only the law but also the client and the retainer.

Your clients will seek assistance when something has gone wrong. They are often dealing with a physical or mental impairment and its consequences. On top of this, litigation will be an unfamiliar territory for most clients, making for an emotionally-charged environment. So, the relationship with your clients is going to be challenging from the start.

LPLC sees many claims from personal injury matters where practitioners did not communicate effectively with them and failed to manage their expectations. Claims also arise where practitioners were not being proactive in managing legal issues such as calculating limitation periods and investigating causes of action at the front end of the matter. Inaction on the client's part is often a factor.

In one claim, the firm acted for a client who was injured through her employment. The firm advised the client that her physical injuries were unlikely to be considered serious under the common law test, which led to settlement.

However, the firm did not investigate and advise on the client's mental condition. The client provided no instructions on the condition but it was mentioned in her medical reports.

Several years later the claimant saw another firm about her ongoing mental condition. She was advised that it would likely satisfy the serious injury test, however, due to the earlier settlement, she was unable to make a common law claim for non-pecuniary loss.

In situations like this one, you need to:

- find out what your client's expectations are and manage them from the outset
- be forensic when taking instructions
- explain the litigation process, including the limitation period, the steps to be taken and the time the matter could potentially take to resolve

- be clear about the costs that will be involved, including disbursements and how you are to be paid.
- And always provide written reasons where there is no common law claim.

Where the client will not take your advice or consult a medical specialist:

- explain the risks, using plain language
- question the client to confirm they understand the risks
- record the discussion, including the client's response to your advice in a file note and
- confirm this in a letter to the client.

Be proactive in obtaining instructions, evidence and medical reports. But if the client ignores your warnings about delay, terminate the retainer.