

## Editor's note

ESSAR Insurance Services Limited, Managers of the Professional Indemnity Scheme in collaboration with Panel Solicitors, issue this quarterly bulletin to highlight risk management issues come across during claims handling.

## THE IMPORTANCE OF ATTENDANCE NOTES

In claims brought against solicitors, a commonly seen dispute is whether certain advice or instruction was given or not.

The lack of attendance notes has often put solicitors in a disadvantaged position when defending claims as they are unlikely to recall what advice they gave or what instructions they received, in routine matters.

For good risk management, proper attendance notes should be kept.

### Evidential Value of Attendance Notes

- Attendance notes are valuable evidence in the event of a factual dispute.
- Attendance notes should be made at the time of or shortly after the event in question so that they are contemporaneous records. They act as aide-mémoire and are often preferred to witness statements which are prepared solely based on recollections and made several years after the relevant events.

Ng Chiu Mui & Anor v Robertsons [2014] HKEC 1803

- Plaintiffs commenced proceedings against their former solicitors alleging that the latter were negligent during their representation of the plaintiffs at a hearing before the Securities and Futures Appeal Tribunal. One of the issues determined was whether the solicitors had properly advised the plaintiffs as to the significance of testifying before the tribunal.
- The bulk of the solicitors' evidence was documentary, comprising manuscript and typed attendance notes, emails and letters issued by the solicitors which were copied to the plaintiffs, throughout the subject retainer.
- The Court accepted the solicitors' evidence regarding the meetings and oral communications with the plaintiffs as they were held to be well supported by

contemporaneous written records. The plaintiffs' case was dismissed.

### For All Important Oral Communications

- Attendance notes are not only for advice given to clients, they should also record clients' instructions and all important oral communications with adverse parties, experts and related third parties.
- This includes communications conducted by non-professional staff, e.g. paralegals and clerks. The need to keep proper attendance notes (as well as the importance) should be well communicated within the firm.
- **Detailed, complete, accurate and legible** attendance notes should be kept as they may be relied upon several years after the relevant events.
- Dunhill v W Brook & Co and Crossley [2016] EWHC 165 (QB)
  - In defending a negligence claim regarding a personal injury claim settlement, solicitors produced attendance notes taken by a trainee solicitor. It was however found that the notes did not provide a full account of the events as certain parts of the notes were too brief as compared to the time of the discussions.

### Contents

- Attendance notes should be dated with time and duration, names of the attendees and the file reference number. Firms should consider creating a template for attendance notes.
- For communications with clients, they should record (amongst others):-
  - instructions taken.
  - advice given.
  - outcome of the communications, including decisions made by the client.

### **Subsequently Record in Writing**

- In addition to keeping attendance notes, it is a good practice for firms to record oral conversations (especially for important advice and instructions) in writing shortly after such conversations taking place.