

Claim Trends & War Stories

—
29th July 2020

Introductions



Why are we here?

Presenters:

- Brian Balkin
 - 25 years at Lockton and for the last 20 years worked exclusively with law firms assisting with PII, Cyber, Asset Protection, Management Liability and other insurance needs.
 - Often gets involved in claims work, ensuring that claims proceed as smoothly as possible.
- James Turnbull
 - James is a solicitor and specialist claims advocate within our Professions team. He has 20 years' experience in the London market, primarily specialising in claims against solicitors, including 10 years with the Solicitors Indemnity Fund and 4 years with DWF.
 - James has extensive experience in dealing with coverage disputes and deals with claims against a variety of professionals.
- Kate Heiden
 - Kate is a qualified Barrister and has 8 years' experience within the insurance sector specialising in Professional Indemnity.
 - Kate has expertise in managing claims against a variety of professionals including solicitors, insolvency practitioners and construction professionals whilst working for both a British multinational insurer and in private legal practices.

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Recent Claims and War Stories

War Stories

Depositor Financed Developments

- We have seen a large number of claims relating to depositor financed developments.
- The SRA issued a warning notice on investment schemes in June 2017.
- Law firms typically have acted for overseas investors, in purchasing leasehold units “off the plan”.
- The transactions were high risk transactions in that the construction was being financed entirely by depositor funds, such that the contractor had no “skin in the game”.
- Further, the investors were typically paying a higher deposit of 40% (sometimes as high as 80%).
- A number of developments have failed and the depositors have lost their deposits.
- Claims are now being made against the law firms who acted for the overseas investors, resulting in claims that run into the millions, for failing to warn about the high risk nature of the developments



Unlawful Banking Facility

We continue to see notifications in relation to Rule 14.5/Rule 3.3 SAR breaches

The more recent notifications often arise from the belated discovery that money has been received/held in client account for reasons unrelated to the provision of legal services in private legal practice

A report to the SRA may be necessary and disciplinary action may result

On investigation, some firms have also discovered that client monies have been paid, albeit with the instruction of the directors of the client, to a third party entity other than the client or original payee

We have seen several claims seeking to recover the money paid to the third party, on the basis that the monies have been wrongfully or even fraudulently diverted away from the client

Trust Claims

Mitigation of IHT

Residential care costs

10 year anniversary charge

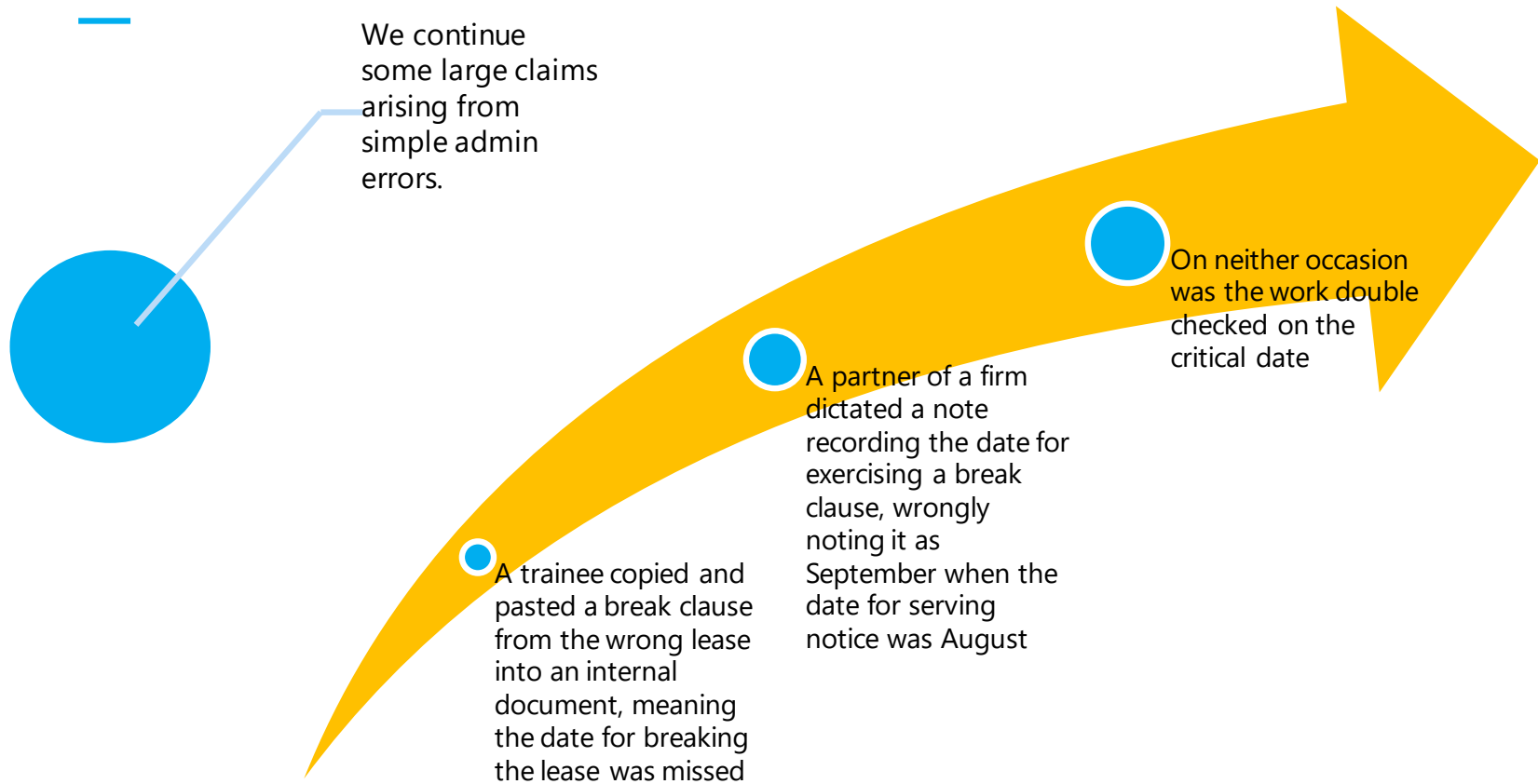
Clients struggle to recall advice Trust creation

How do we resist claims?

We have seen a rise in the number of claims made in relation to trusts

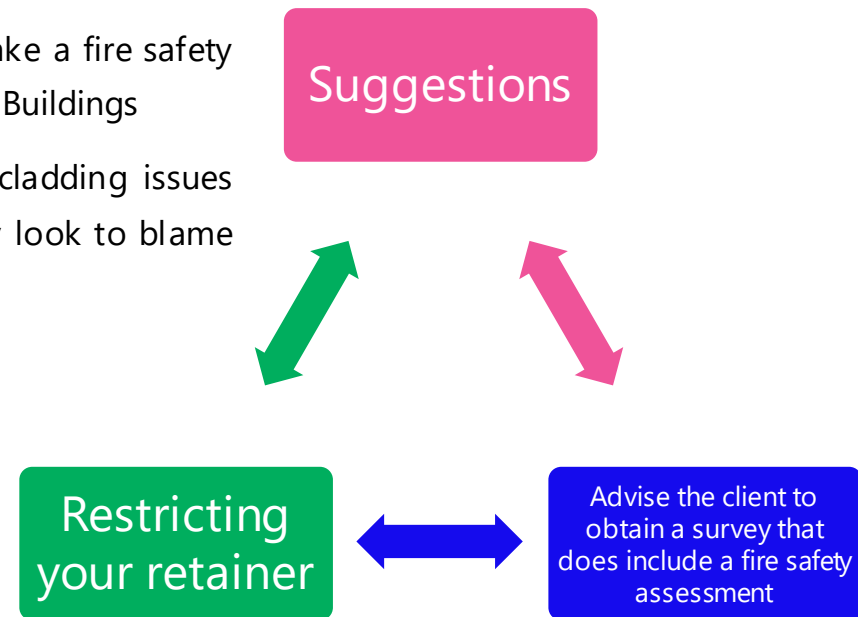
- Typically the claims relate to homes placed into trust to mitigate against IHT or residential care costs for the aged
- Clients are now facing the 10 year anniversary charge
- Clients seem not to recall the advice that was given to them at the time of entry into the trust (10 years go)
- Does the file continue to exist?
- If not, the claims may be hard to resist in proving what advice was given to the clients at the time

Claims arising from Admin errors



Cladding Fire Safety

- Residential conveyancing matters: does the retainer extend to advise on fire safety?
- Cladding issues originally considered to effect only high rise buildings above 18 metres. No longer the case.
- Ministry of Housing Guidance January 2020:
 - All home owners/occupiers will be required to undertake a fire safety assessment of Multi-storey, Multi-Occupied Residential Buildings
- Recent purchasers of residential buildings blighted with cladding issues may have limited redress to recover their losses and may look to blame the professionals involved
- The survey: does it extend to advising on fire safety?
- Is a copy of the survey provided to the firm?



Office of the Public Guardian



Emerging Trends

Claims Trends & Forecast

Wills, Trusts & Probate

Silver & bronze (£)
Why a higher frequency?
Leading causes of claims

Risk areas:
Drafting; Retainers; Records;
Management; Tax; DOA

OPG
Trust anniversary

Emerging

Landscape: Covid 19
High risk depositor financed
developments

M&A's
Risk management

SDLT
Breach of Trust emanating
from fraud

Recession

Numerous variables

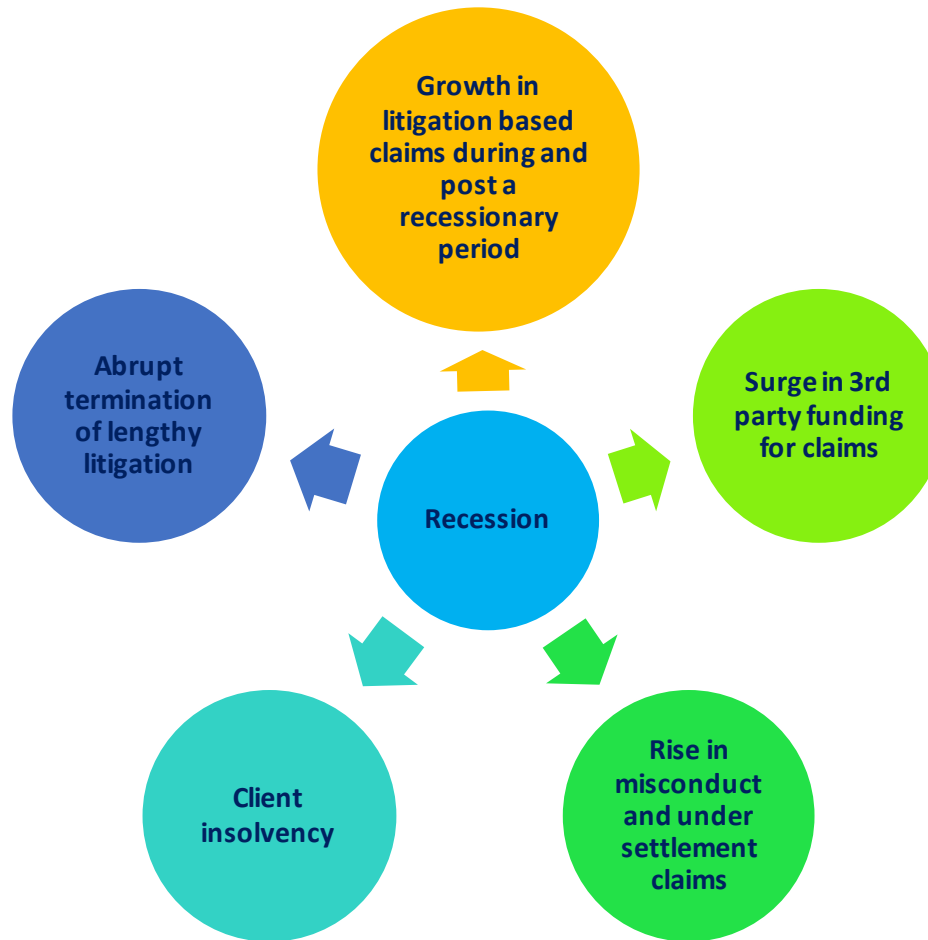
Factors
Reduced client spend
Value for money
Undesired outcomes
Insolvency

Reduced risk team capacity

Current & Emerging Claims



Current & Emerging Claims



PII Renewal Preparation - October 2020

The last two years have been increasingly challenging

- Why? Claims, Lloyd's Review 2018, expected losses, insurer exits, reduced capacity

Scrutiny, additional questions

- Covid-19, Buyer funder development, Cyber risk, fraud

Premium rates increasing

- Across both Compulsory/Primary and Excess Layers

Likely to last well into 2021

- New capacity?

How can it be made better?

- Start now, give yourself time

Work with your broker

- Agree timelines, don't leave it late

Renewal submission / Proposal Form is Key

- Spend time
- Provide additional information
- Comprehensive, good looking document

Present who you are

- Look at claims
- Other issues the business has had
- Covid-19
- Financial standing – short and medium term
- Staff adjustments

Make a Fair Presentation of the risk you may pose to an underwriter

Be open, honest and make it look as good as possible

If you do not articulate what you do and how you do it, in order to manage and mitigate risks in your firm and practice areas, how can an Underwriter know this and reflect this positively in their proposed premium?

Tell your story

- How have you got to where you are today? Be open and proud of your accomplishments

Articulate what you do and how you manage it

- Highlight what you don't do / avoid

Who are your typical clients?

- What work do you do for them, do any count for a large % of your turnover?

How is work sourced?

- How is a new enquiry vetted before a file is opened?

What is the strategy and longer term vision of the firm?

- Be open - about finances, consultations etc.

How is risk and compliance managed within your firm?

In conclusion:

- 1 • Prepare early, now!
- 2 • Talk to your broker, agree a strategy, discuss budgets
- 3 • Make sure others within your business are available to provide you with information when required
- 4 • Submit a comprehensive, good looking renewal proposal form/submission
- 5 • Be prepared for additional questions from insurers
- 6 • Consider finance options available early

Work collaboratively with your broker it will help yield better results

Questions

Independence changes everything.



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