

How long does it take for a mistake to be discovered?



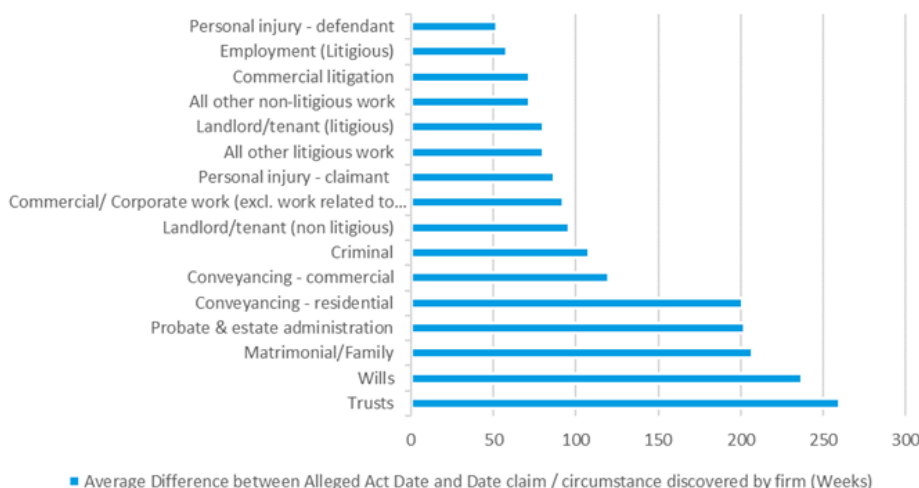
The time it takes to discover a mistake, error or negligent act can vary hugely. We have seen claims which are notified almost immediately after the negligent act took place, to the other extreme where one matter (residential conveyancing) was reported 38 years after the work was carried out. Those claims discovered quickly have the potential for rectification however social engineering fraud claims, where money is wired to an imposter purporting to be the client, can be difficult to mitigate in terms of retrieving the funds, as they are often swiftly transferred to multiple accounts overseas, never to be seen again. Claims which arise years after the fee earners have left or from work no longer carried out by the firm, can be particularly difficult to defend: lack of information, attendance notes or files destroyed or lost, mean firms are left floundering to defend themselves.

Claims arising from work undertaken by predecessor firms which have been acquired can be even more challenging to defend and highlights the importance of carrying out thorough due diligence when looking to acquire another firm. Firms should consider, for example, a sample of files from different departments and include a selection of closed files as well. Were the files closed after completion of a standard file closure check list, especially in conveyancing where many claims arise from poor post completion procedures.

Consideration of the period of time that has elapsed between when the work is undertaken and when a claim is made may provide useful guidance in determining how far back the due diligence should extend for various type of work.

The chart below shows the mean average number of weeks it takes to discover a claim or circumstance:

Average Difference between Alleged Act Date and Date claim / circumstance discovered by firm (Weeks)



Across all work types, we have discovered the mean average is 3 years with a median of just over 1 year.

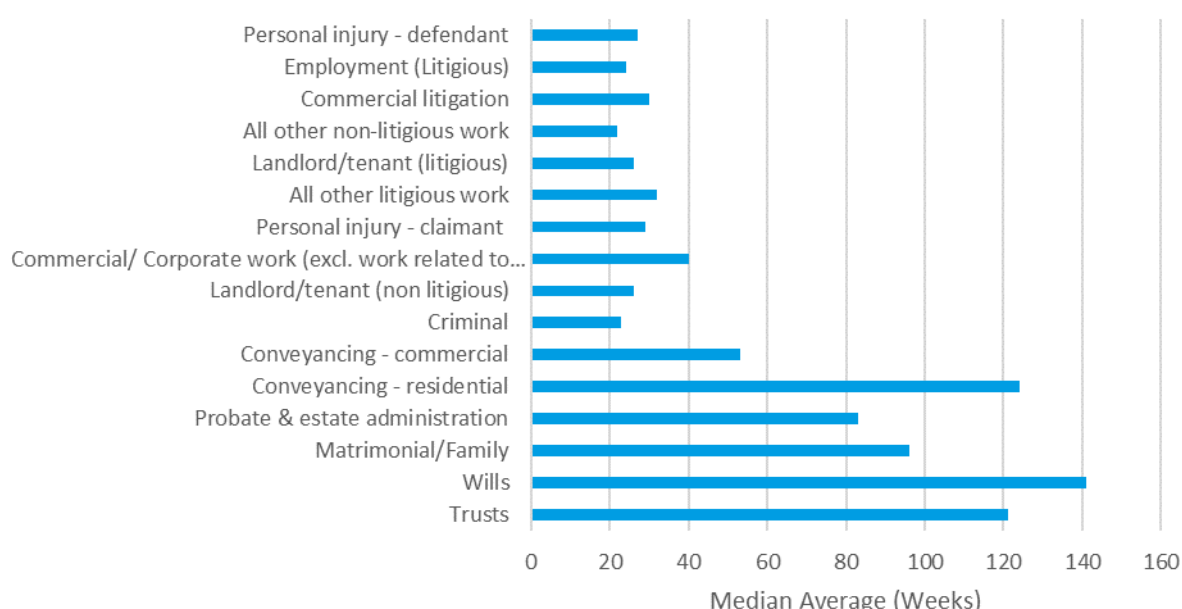
The work type with the greatest “average work-to-claim gap” was Trust work at mean average of 5 years, with a median of 2.3 years – the longest was 22 years.

Not surprisingly the second longest “average work-to-claim gap” is Wills at 4.5 years, with a median of 2.7 years – the longest was 24 years

Matrimonial/Family was third longest at a mean average of 4 years and median of 2 years. Although it may be expected any disagreements arising from a divorce settlement would be identified more quickly, these disputes often relate to pension values which may only be discovered at a later stage.

The chart below shows the median average number of weeks it takes to discover a claim or circumstance:

Work Types and Average Difference between Alleged Act Date and Date Claim / Circumstance Discovered by Firm



Probate and Estate Administration has a mean “work-to-claim gap” average of 4 years and median 1.5 years. This might demonstrate that disappointed beneficiaries take years before they make their intentions known.

Interestingly Commercial Conveyancing was twice as likely to be discovered early than Residential Conveyancing. Commercial Conveyancing has a mean “work-to-claim gap” average of 2.3 years with a median of 1 year, whereas Residential Conveyancing has a mean average of 4 years and a median 2.3 years. This is likely to be due to the shorter term leases on commercial real estate whereas residential home owners tend to only discover problems when the properties are re-mortgaged or sold.

Landlord and Tenant is discovered even more quickly than Commercial Property at a mean average of just under 2 years and a median 0.5 years.

Corporate work tends to be discovered within a mean “work-to-claim gap” average of less than 2 years and median of less than 1 year. The longest “work-to-claim gap” was 18 years – which may surprise some given to the 15 year long stop period under the Statute of Limitations.



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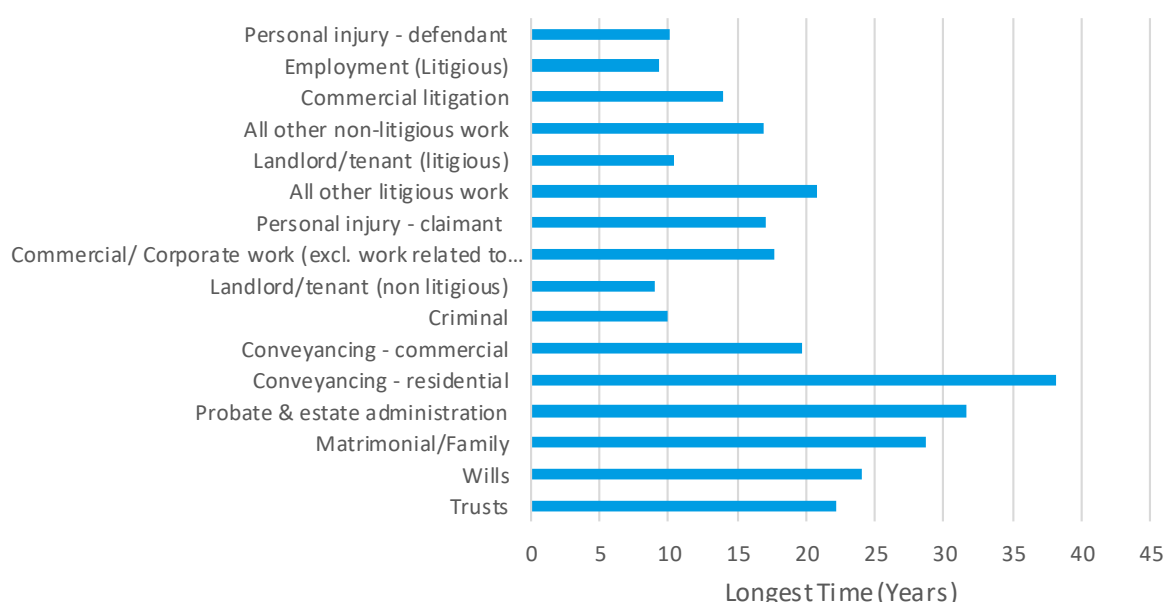
UNCOMMONLY INDEPENDENT

Personal Injury has a mean “work-to-claim gap” average of just over 1.5 years with a median of 0.5 year. This may be encouraging for firms who are considering how far back they should go carrying out due diligence on books of business from firms looking to sell their personal injury work.

All other Litigious and Landlord & Tenant Litigious were both at mean of 1.5 years and a median of 0.5 years. Generally Litigation was the quickest type of work to be discovered as a claimant will know fairly early if he/she has any concerns about the settlement or if there is a missed deadline. Both Employment and Personal Injury Defendant Work claims were made within a mean average of approximately 1 year and a median of 0.5 years

The chart below shows the longest times for a claim or circumstance to be discovered for each type of work:

Work Types and Average Difference between Alleged Act Date and Date Claim / Circumstance Discovered by Firm



Although the above figures may provide some comfort for certain types of work as to the length of the liability tail, they are averages and there is always the risk that a claim will be discovered from work carried out many years in the past. The point at which time runs for the purpose of the statute of limitations can extend a firm’s liability tail, including, potentially beyond 15 years. For minors wishing to make a claim for injuries suffered when they were an infant, for example, the clock does not start to run until they reach age 18 and they then have until they are 21 to make a claim.

Firms should always consider what an appropriate limit of indemnity should be for work undertaken not only now, but in the past. Whilst the cost of professional indemnity has increased substantially over the past year and firms are under more financial pressure than before, we would strongly advise firms to think twice before reducing the levels of their PII. The savings to the practice for a reduced limit may be short lived if faced with a substantial claim which leaves the firm largely uninsured.

Data supplied from HDI:

Data based on claims and circumstances from 1/10/2016

Mean averages can be skewed by very large or low numbers.