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Is It Time to Call in the WIP Doctor? - Edel Rome, Citadel Law



Edel Rome, solicitor at Citadel Law, shows how diagnostic review can improve financial viability for clinical negligence lawyers.

Our diagnostic reviews of law firms' clinical negligence caseloads often highlight low levels of expertise and poor risk management. These have a substantial impact on key areas such as client care and billing. They also represent a major negligence risk, with the knock-on effect on professional indemnity insurance and ultimately cash flow and financial viability.

Many new entrants into the clinical negligence market quickly appreciate that there is a lack of immediate profit and a pressing need for substantial capital investment. Clinical negligence diagnostic reviews help our clients to understand what lies beneath and whether the work is set to turn a profit or become a headache. Defendant lawyers are not slow in giving claimant clinical negligence lawyers a kicking if claimants' bills of costs indicate inefficiency or poor advice in successful cases.

This expansion into clinical negligence has been driven in part by falling profitability in mainstream personal injury, and coincides with the increase in claims made to the NHS Litigation Authority, which received 10,129 clinical claims in 2012/13, up 11% from the previous year. There are, of course, many reasons for this, including the challenge the NHS faces to find £20bn in productivity improvements by 2015 – as financial pressure on the NHS grows, so do the fears that patient care will suffer. But it is important to note that around 40% of claims were resolved without a damages payment.

The most recent NHSLA annual report said: "Once an early repudiation has been made, very few claims came back, indicating a thorough investigation was undertaken by our teams at an early stage."

The NHSLA paid out just over £1.1bn on clinical claims in 2012/13; for every £1 in damages, it paid out 44p in claimant costs and 11p in defendant costs.

Our experience of failed business models

At Citadel Law we are often retained when cases are not being settled, WIP is building, and the drain on cash flow is causing concern. We are also brought in when law firms are looking for bank finance and we help them to make their business models and cash flow projections more robust.

Ultimately, if a law firm cannot make PI and clinical negligence profitable, it should be considering its options, and potentially to sell its caseload. In those circumstances we carry out WIP valuations for both sellers and purchasers.

It is an unfortunate truism that if clinical negligence cases are not run by experts, they very easily get into difficulty and often fail. Process and expertise/technical skills are the key to success.

The financial impact of getting these cases wrong can be devastating and may come to light only after several years of paying salaries and investing in fees and disbursements to fund the investigation of work that is going nowhere because of poor risk assessment and case management.

How to tell if it's time to call in the WIP doctor

- Are you achieving the optimum in risk-assessing winners from losers?
- Is the drop-out rate/number of lost cases too high?
- Are there substantial WIP write-offs and unrecovered disbursements?
- Are cases issued at court at the eleventh hour?
- Are cases taking a long time to get to the key stages in litigation?

If these issues are not addressed, the likely outcome is poor client care, high risk of negligence, substantial WIP write-offs and lost capital funding cases with limited prospects, making fee-earners and teams a poor investment.

The diagnostic review process

Diagnostic review involves looking at a sample of cases to assess (for example):

- the quality of business leads
- fee-earners' ability to risk assess new cases and to select experts, counsel and other external

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The Sharp End of Employers'

agencies

the commercial viability of cases and fee-earners, to enable the firm to plan for the future of the department

the quality of supervision, management and training.

Such diagnostic review will enable the firm to maximise profitability and achieve clarity on the strategic future (if any) of the department.

With the right expertise and risk management, the settlement of cases at the right date and at the right value becomes easier to predict and financial forecasting far more robust.

Getting it wrong: case study

A medium-sized multi-service law firm with a strong regional reputation for PI had grown a clinical negligence department without specialism. Within about two years it had around 180 cases with WIP of more than £1m. We found eight cases of potential serious negligence with WIP totalling £88,000. Some 31 cases were to be discontinued due to poor merits, with WIP write-offs of £185,000. A further 70 cases were found to have poor prospects following further investigative work, increasing the total WIP write-off to £435,000. The remaining cases were not clear-cut and significant investment was needed to ensure expertise, risk assessment and commerciality were applied in future.

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