

REVIEW



**Professional
Negligence – a more
litigious culture or
just more to cope
with?**



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Professional Negligence – a more litigious culture or just more to cope with?

Advocate John T Aycock analyses why more professionals are facing negligence claims and suggests some basic steps to take to reduce the risks.

Carelessness costs, as professionals and their indemnifiers continue to find out to their detriment. It is the colloquial term for what the law characterises as negligence. In general terms, negligence or a breach of duty of care can be found in law when a professional is adjudged to have fallen below the standards reasonably expected of a competent person in that field. The test can be more complex than that depending on the discipline and circumstances involved.

The cost of professional negligence appears to be on the increase. It was recently confirmed that basic mistakes in hospitals in England cost the NHS up to £2.5 billion annually. This is at a time when NHS Trusts are trying to save money. Other professions such as law and accountancy are not immune from this trend. Is this because of a drop in standards or because we live in a more litigious culture or does the surge in professional negligence claims amount to collateral damage in the fundamental lifestyle changes that are rapidly occurring?

There are undoubtedly external factors that contribute. Cultural, society and technological developments are changing the way we all work. Few professionals

would fail to recognise these three principal features as now featuring uppermost in their daily routines:

- Time pressure: the dominance of instant electronic communication seemingly rewards those who work quickest and is constantly forcing shorter response times;
- The working hours/leisure time blurred line: technological developments allow the desktop PC to be accessed remotely anywhere in the world at any time. Very handy but it causes considerable time management issues;
- Information overload: historically professionals might have received a trickle of professional periodicals and updates. Torrents now arrive unsolicited on a daily basis.

In addition, there are lifestyle and generational changes evolving, such as:

- New skill sets are required to handle today's differing pressures and many old school professionals will not have been taught such skills in their education. For instance efficiency in email handling and proper noting up have become priority tasks to keep up with the daily pressures;
- Job loyalty and longevity are reducing thus there are more starters and leavers which in turn means an increased risk

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of exposure during induction/training periods and leaving periods;

- The contemporary tendency as illustrated on social media is to be less reflective and more instantaneous in response and it is said that the younger generation accordingly has a reduced attention span.

So time pressure, working offsite and processing more information can all combine to make it easier for busy professionals to take their eye off the ball. This is ironic as the technological advancements are predicated on making work more convenient.

These external factors and the lifestyle changes contribute to professionals having to adapt the way they work. Coupled with that, society has become more litigious. This combination means that professionals must increasingly guard against letting standards drop.

There is no magic answer to deal with this problem. Professionals must go back to basics and be pedantic about how they manage their customers and expectations generally. They must, where reasonable, resist time pressure for an instant response, focus on one task at a time and ensure sufficient time is set aside for continuing education, compliance matters and the checking of proper work systems. Not

taking on too much work is an important part of time management. In recessionary times it is more difficult to say no to new work, but spreading yourself too thinly rapidly becomes counter productive.

Whether it be law, accountancy, medicine or any other profession, individuals must ensure sufficient time is built into each day to check procedures are being followed and things are being done properly. This is far easier said than done.

The author is an advocate in the Isle of Man and a solicitor/advocate in England and Wales and has more than twenty years experience of advising on professional negligence cases.

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