

RISK MANAGEMENT: NO EXCUSES FOR MISSING CRITICAL DATES

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Please note that this article was written for Scottish lawyers and some aspects of the article may not be relevant/ applicable in our jurisdiction, the decision to print this article in its entirety is for its overall message on the importance of adherence to timescales.

Whilst time bar claims are often assumed to be of principal concern to those involved in contentious matters, most areas of practice require adherence to timescales. All practitioners would be well advised to consider how those time limits are managed.

WHAT ARE THE CAUSES OF THESE CLAIMS?

- ♦ No diary system at all!
- ♦ Inconsistent diarying of critical dates
- ♦ Incorrect date diarised, as a result of error as to the facts or law
- ♦ Diary system warnings not acted upon
- ♦ Client not managed properly

HOW TO PREVENT THESE ERRORS AND OMISSIONS

The following questions featured in a time bar risk checklist from another jurisdiction. If you can genuinely answer 'Yes' to all the following questions, then you ought to be well in control of critical dates and the risk of time bar claims.

CRITICAL DATE SYSTEMS AND PROCEDURES

- ♦ Does the practice have a formal procedure for recording critical dates and time limits?
- ♦ As part of the practice's induction procedures, are newcomers to the firm/ office/department instructed on the critical date systems and procedures?
- ♦ Are critical dates/time limits researched, identified and diarised as a priority at the outset of every matter?
- ♦ Does this also apply to time limits identified during the course of any piece of work?



They say that time changes things, but you actually have to change them yourself

[Andy Warhol](#)



Do, or do not. There is no try

[Yoda](#)



*A journey of a
thousand miles begins
with a single step*

[Lao-tzu](#)

- ♦ Are litigation checklists used to prompt consideration of issues including unusual time limits; periods (eg. nonage) that are disregarded when determining critical dates; whether additional defenders should be convened?
- ♦ Where fee earners from different departments are working on separate aspects of the same matter for a client, or on related matters for the same client, do the systems ensure that all concerned:
 - ♦ are equally aware of all critical dates/time limits?
 - ♦ know who is responsible for compliance with each critical date/time limit?
 - ♦ know who is responsible for keeping the client informed?
- ♦ Are all critical dates/time limits clearly referenced according to:
 - ♦ client?
 - ♦ file reference?
 - ♦ responsible partner?
 - ♦ fee earner(s) handling the file?
 - ♦ action to be taken?
- ♦ Do all diary systems, computerised and manual, contain “countdown dates” to the critical date/time limit, which show the fee earner and warn the responsible partner of:-
 - ♦ the optimum date(s) by which action should be taken?
 - ♦ the absolute last date by which action must be taken?
- ♦ Are critical dates included on the agenda for meetings with the responsible partner and discussed (impending deadlines receiving priority) irrespective of any other business?



*Just because
everything is different
doesn't mean that
everything has
changed*

[Irene Peter](#)

- ♦ Where the responsible partner fears that a key date may be missed for any reason, does he/she intervene and reallocate work?
- ♦ Are all fee earners required to conduct a physical check of all their files on a regular basis?
- ♦ Are regular audits conducted by fee earners of other fee earners' files on a random basis to check, for instance, that critical dates have been correctly identified, diarised and communicated to clients?

MANAGING CLIENTS

- ♦ Are clients advised of all critical dates and time limits?
- ♦ Are clients advised of the action(s) required by them in order that critical dates are complied with?
- ♦ Are clients advised of the consequences of failure to provide information or to take action which is time critical?

LEARNING FROM NEAR MISSES

- ♦ Does the [head of department] keep a record of cases where critical dates/time limits would have been missed but for his/her intervention so that appropriate preventive measures may be introduced?
- ♦ Where any critical date has been missed, has the situation been thoroughly investigated and the underlying cause identified and remedied to prevent recurrence?

CASE STUDIES

Consider the following case studies (some taken from *Ensuring Excellence, Even Better Practice in Practice*) which demonstrate the different ways in which critical date-related errors/omissions can result in claims. In each case, it is arguable that the arrangements referred to in the questions above, including checklists, file reviews and case review meetings would have prevented the claims arising.



Success isn't permanent, and failure isn't fatal

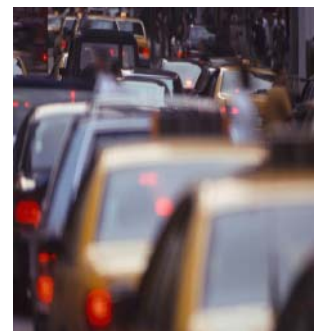
[Mike Ditka](#)

Thinking Ahead

Mr Joiner slipped and hurt his back on an icy ladder at his work. His solicitor raised an action against his employers just within the triennium, relying on breach of the employers' common law duties. After a debate had been discharged and a couple of Minutes of Amendment allowed, the case came again before the Sheriff, who refused leave to amend yet again and dismissed the action on the pleadings as they stood, holding the common law case irrelevant. A statutory case would have had considerably higher prospects of success but had not been pled. Following an unsuccessful appeal, Mr Joiner sued his solicitor and recovered a substantial sum.

When A Triennium Isn't A Triennium

Harry had always wanted to take a trip in a hot air balloon. To mark twenty five years with the company, his colleagues clubbed together and arranged for him to go on a trip. Weather conditions on the day were less than ideal. Harry protested that he considered it far too windy to be taking off but the operators assured him that there was no problem. They made the point that there would be no refund if he decided not to go ahead. After a fairly turbulent take off, the flight had to be cut short because of the stormy conditions. In the course of an emergency landing, Harry was thrown out of the basket and sustained fairly serious injuries to his back and fractured an ankle and both wrists. Harry's solicitor advised him that he appeared to have a strong case against the balloon operators. The solicitor was meticulous in advising Harry of the timescale for bringing his claim and he was careful to note the critical dates on the file and in his diary system.



It's kind of fun to do the impossible

[Walt Disney](#)