

## "DIFFICULT BUSINESS, "LITTLE LIES" AND MAJOR CONSEQUENCES"

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### The Importance of Maintaining Professional Standards and Supporting Colleagues at All Times

A recent judgment of the Solicitors Disciplinary Tribunal ("SDT") serves as a powerful reminder of the importance of ensuring that professional standards are maintained at all times. It also demonstrates the value in providing all members of staff, regardless of their level of seniority, with support in dealing with difficult accounts, and recognising when individuals under intense or long periods of high pressure may require additional support.

Whilst the case involved a solicitor, the risk management messages are applicable to all professionals, not least to insurance brokers.

#### SOLICITORS REGULATION AUTHORITY v. HARLING

Mr Harling was the Managing Partner of his firm, and he had over 28 years of legal experience. He had been instructed to deal with a boundary dispute between his client and his client's neighbour. Mr Harling was specifically instructed to issue court proceedings against the neighbour. However, he failed to do so because he believed (seemingly genuinely) that the case could be resolved through mediation, and without the need for litigation.

So, between January 2012 and April 2013, Mr Harling sent several emails to his client which gave the impression that proceedings had in fact been issued in accordance with his instructions. Throughout that time, his client repeatedly requested details of the date on which the case was to be heard at court. Mr Harling did not alert his client to the truth, and as time went on, his responses became increasingly embellished. The matter finally came to a head in April 2013, when Mr Harling's client telephoned the listing offices at his local county courts himself, only to be advised that his case had never been listed. Mr Harling was ultimately forced to admit that proceedings had not been issued, and that he had not followed his client's express instructions.

Whilst Mr Harling accepted that he had not followed his instructions, he explained to the SDT his hope that the matter could be resolved without his client facing the inherent risk of litigation and/or the potential costs consequences that may have resulted. Mr Harling argued that boundary disputes were particularly difficult to deal with, and that he had properly considered that litigation was not the most appropriate way to handle the matter. He also attempted to justify his actions on the grounds that an amicable resolution would have assisted his client's ongoing relationship with his neighbour.

Nevertheless, the SDT found that Mr Harling had acted dishonestly over a significant period of time, and that he had embarked on a "*sustained and developing deception*". His conduct, not least as a senior solicitor of his standing, was held to be unacceptable and, despite having an otherwise unblemished record, his name was struck from the Roll of Solicitors accordingly.

## THE RISK MANAGEMENT MESSAGE FOR BROKERS

### Honesty Is Always the Best Policy

It goes almost without saying that acting dishonestly, or deceiving your clients, will fall below any standard of professionalism expected of an insurance broker. Such conduct is clearly never acceptable.

Mr Harling had concluded that he did not feel able to act in accordance with his client's instructions because to do so would not have been in his client's interests. He should, therefore, have advised his client not to issue proceedings, and possibly ought to have invited his client to instruct alternative solicitors if he felt that he could not continue to handle the matter at all.

A "little lie", even if made with the best of intentions, can very quickly turn into a major case of deception and dishonesty that cannot be undone, and the consequences for the individual and the firm can be shattering. Misleading a client as to the true position will never be viewed favourably by any client, employer, regulator or court. The dishonest professional may also find that they bear a personal cost, even if the firm may have some cover from its professional indemnity insurance.

### Keep the Client Informed

However, this case also highlights the importance of keeping clients fully and properly apprised of progress throughout any transaction, whether it be in respect of the placement of a risk or the resolution of a claim. Whilst the level of information that is required may differ on occasion, this duty applies where you are acting directly for the insured(s) or on the instructions from another insurance intermediary. Ensuring that your client is fully informed will help to avoid any argument later on that they would have acted differently had they been advised of the full, or true, position.

### Proceed with Caution with Difficult Accounts

The case also demonstrates the problems involved in handling difficult accounts. The SDT in this case took the view that Mr Harling should have advised his client about the prospects of successfully running the case to trial, rather than concealing the true position in order to avoid litigation. Even if you expect that your client may proceed against the advice that you have given, that is a decision for the client to make alone. As ever, it is important to ensure that such advice, and the client's subsequent decision to act against that advice, are properly documented on your file. An example may be where a broker advises a client to commission a survey of its commercial premises, in order to ensure full compliance with its disclosure obligations prior to inception. If the client elects to proceed without a survey and coverage issues arise at a later date by virtue of some undisclosed information, the broker will be in a far stronger position if it can show that the client chose not to take its advice and failed to conduct a proper survey.

Alternatively, consider the not-uncommon situation in which a broker is experiencing difficulty in finding cover for a risk at renewal. Imagine that underwriters have agreed to a fourteen day extension in order for alternative cover to be obtained, and after much time and effort the broker has obtained terms from an alternative market. However, the broker is very busy and the placement is yet to be signed off by underwriters. The client calls the broker on the last day of the extension (a Friday) to request an update. The broker, not wanting the client to be

concerned, and in the belief that placing cover the following Monday will be a mere formality, wrongly assures the client that cover has been placed with the alternative market and that documentation will be sent the following week. However, a loss occurs over the weekend and the alternative market subsequently withdraws its quotation and/or refuses to effect cover retrospectively so as to cover the loss. What may have appeared as a minor concealment of the truth at the time, will undoubtedly cause a major problem for the broker.

## Encourage a Culture of Support

Finally, the case shows the importance of encouraging a culture of support and transparency, at all levels and at all times. The SDT heard, and accepted, that Mr Harling had been under significant pressure following his appointment as Managing Partner. One of his fellow partners gave evidence explaining that the firm had not realised how hard Mr Harling had been working on cases, as well as in response to his additional responsibilities in running the firm, which also happened to be in financial difficulty. Mr Harling had worked day and night *"but did not take time off due to stress, as partners were not allowed to be stressed."* Broking firms should endeavour to ensure that members of staff who may be under high pressure or experiencing heavy workloads are identifiable, and that all members of staff have an opportunity to raise any concerns with managers or colleagues in confidence. It is worth remembering that not all warning signs are immediately obvious. However, they may include a change in personality, presentee-ism, not taking holidays, and not delegating work where appropriate. Looking out for colleagues, and providing support, can often prevent problems arising in the first place. The earlier that problems are identified, the easier they can be to resolve, and the Griffin is on hand to offer advice to Members where necessary.

This case is an unfortunate reminder of the severity of the problems that can occur where difficult accounts and stressful conditions lead to errors of professional judgement, dishonesty and deception, all of which can quickly spiral out of control.

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