

Name: [Redacted]

Membership No: [Redacted]

1. Competency: 7

Learning Outcome: 7.2

Understand limitations of professional skills and knowledge

2. Evidence provided:

File note considering the problem, email to specialist team seeking advice, file note of meeting with specialist, strategy document applying advice given, email providing advice to Insured

3. Outline how the evidence demonstrates you meet the outcome:

Identify where you do not have the skills/knowledge to undertake a task:

I was acting for my client (an insurance company) in the defence of a professional negligence claim against one of their insured solicitors ("the Insured"). The claim related to the Insured's conduct when acting in a commercial lease renewal. The claim against the Insured focused on whether the Insured breached their duty to the Claimant by failing to obtain a validly executed lease. The Insured had sought my advice on how to respond to the claim.

As I have little knowledge of commercial lease renewals, I considered that it would be sensible to seek further specialist advice to enable me to advise the Insured.

Act to resolve the situation:

I arranged a meeting with our Real Estate team to seek advice from a specialist.

Provide evidence of the limitation, how it was identified and action taken to resolve:

As I established that I did not have the specialist knowledge to provide sufficient advice to the Insured, I sought advice from a specialist in our Real Estate team. I was advised that due to the type of lease in question, the lease did not have to be created by deed and could be created by simple written agreement pursuant to S52 Law of Property Act 1925. This meant that it could be argued that the Insured had not breached its duty to the Claimant. There were also various other arguments that could be advanced in order to defend the Insured's position.

I applied this advice to my proposed strategy in defending the claim. I then advised the Insured of the arguments available to them

4. Reflection and evaluation: (what you learnt from the activity you undertook to meet the outcome).

I learnt that it is important to use all resources available in order to seek guidance from specialists when my knowledge is limited. I have now expanded my knowledge in respect of lease renewals in case this situation arises again. In addition, I have made a contact in the Real Estate team who I may be able to seek further guidance from in the future if necessary.

5. Completion date: 18/02/2015

6. Signed: (applicant)

[Redacted Signature]

Date:

17/03/15

7. Signed: (supervisor)

[Redacted Signature]

Date:

28/4/15

FILE NOTE

Client: [REDACTED]
Matter No: [REDACTED]
Our Ref: [REDACTED]
Matter: [REDACTED]
Lawyer: [REDACTED]
Date: 18 February 2015

Considering the Claimant's solicitor's letters of 17 February 2015. I need to establish whether we can argue that the Lease was still an enforceable contract even though it was not validly executed.

Considering the best course of action is to seek advice from the Real Estate team to see whether they can provide any guidance. Do they think the claim should continue to be defended robustly or are the Insured exposed to a finding of breach of duty?

1 Unit

[Redacted]

From: [Redacted]
Sent: [Redacted]
To: 18 February 2015 10:20
Subject: [Redacted]
Help

SOL-ITEM-ID: [Redacted]

Hi [Redacted]

I wonder if you can help me with a query I have on one of my files - [Redacted] pointed me in your direction!

I work in the professional indemnity department and I have a negligence claim against one of our Insured firms of solicitors. The Insured were instructed to act by the freeholder in a commercial lease renewal to the tenant. The lease was to be extended for a further 3 years. The lease was sent to the tenant for execution, however, it was signed but the signatures not witnessed. The Insured then sent the lease back to the tenant for re-execution but the tenant never returned a validly executed lease. The Insured didn't chase this up and didn't inform their client. The tenant remained in occupation for a couple months after the new lease commenced but later absconded from the property. The freeholder is now bringing a claim against the Insured.

My question is can we try and argue that the lease was still an enforceable contract as it was signed in the first instance (so clearly the intention was there to agree to the renewal) or do we not stand a chance as it was not validly executed?

Any advice you can provide would be really helpful.

Thanks in advance!

[Redacted signature block]

FILE NOTE

Client: [REDACTED]
 Matter No: [REDACTED]
 Our Ref: [REDACTED]
 Matter: [REDACTED]
 Lawyer: [REDACTED]
 Date: 18 February 2015

Discussion with [REDACTED] in Real Estate.

Briefly going over the background of this matter and asking for [REDACTED]'s thoughts on how to respond to the claim. [REDACTED] reviewed the 2013 Lease and advised me to advance the following arguments:

- 1) S52 Law of Property Act 1925 states that short leases (a lease of not more than 3 years) may be created by a simple written agreement and do not have to be created by deed (ie. signed, witnessed and delivered). The lease in this case is classed as a short lease as it was for 3 years.
- 2) Why hasn't the Claimant pursued the Guarantors that were party to the lease?
- 3) In any event, the Claimant has accepted surrender of the lease through his own actions by treating the property as his own
- 4) We could also add that the Claimant compromised his claim in July 2014 when an agreement was reached with the tenant.

[REDACTED] photocopied relevant extracts of books that may be of assistance for my information.

Time engaged including preparation of file note: 5 Units

N [REDACTED]

[Redacted] Ltd Strategy Document

Date of Review: 18 February 2015	Reviewed by Claims Handler (Sign name).....		
LLP ref: [Redacted]	Year: 2013		
Insured: [Redacted]	Panel: N/A		
Policy Period: 01/10/2013 to 30/09/2014	Excess: £20,000.00		
Claimant: [Redacted]	Policy Number: [Redacted]		
Date File Opened: 29/04/2014	Reserves in place at review		
	Current Claim Reserve	Claim Paid to Date	Current Cost Reserve
	£0.00	£0.00	£0.00
			Costs Paid to Date
			£0.00

Limitation expiry date	
1. Primary limitation expires:	16 January 2019
2. Secondary limitation expires:	April 2017

Details of Claim:

The Insured acted for the Claimant company which owns the freehold to [Redacted] (the "Property"). The Insured acted on the lease of the Property to the tenant, [Redacted] ("the Tenant"). A 3 year lease was entered into from 12 January 2007. This was renewed by a further 3 year lease from 12 January 2010. This was then renewed again for a further 3 year term from 12 January 2013 but when the Tenant's solicitors returned the signed counterpart lease, the Insured noticed that the signatures had not been witnessed and returned it for execution.

In or around March 2014, it appears that the Tenant absconded and the Claimant instructed [Redacted] to take enforcement action under the lease. [Redacted] requested the Insured's file which was provided in or around April 2014 and the matter was notified on a precautionary basis.

In May 2014, following review of the Insured's file, [Redacted] discovered that the Tenant's solicitors never returned the validly executed lease and the Insured were asked for their comments on the matter. The Insured responded stating that it did not appear that the Tenant returned a validly executed lease and no further steps were taken, however, presumably the terms of the new lease were implemented by the Tenant remaining in occupation and paying rent at the revised rent.

The Insured received further correspondence from [Redacted] as the Tenant was alleging that they told the Insured that they would only agree to a lease for a period of 3 months as they would be vacating the premises in March 2014. [Redacted] state that the Insured's file does not support the Tenant's version of events and the Insured were asked for their comments. The Insured responded stating that the fee-earner who dealt with the matter has no recollection of such a conversation and is confident that it did not happen.

On 15 August 2014, the Insured received a Protocol Letter of Claim from [Redacted] on behalf of the

Quantum

The Letter of Claim states that the Claimant's loss is the amount of rent, rates and other sums which would have been due under the terms of the 2013 lease (less the amount which the Claimant has received from the Tenant) plus costs. The Property is currently vacant and the Letter of Claim states that the Claimant will seek to recover each quarter of rent (totalling £2,625 plus VAT) plus utility costs and rates (£4,026 per annum) from the Insured when the rent falls due if the Property remains vacant on those dates.

In addition, the Claimant claims incurred costs of £9,246.80 in relation to its claim against the Tenant (this sum excludes the Court fee and fixed costs recovered from the Tenant).

The Claimant has made a WP offer to accept £19,724.80 in full and final settlement of its claim. This amount which is inclusive of costs falls within the Insured's excess.

Current Position:

The Claimant has made a WP offer.

Policy Points

None apparent – see strategy document dated 17 November 2014.

Strategy to be followed

We will advise the Insured of the arguments available to them and suggest that they revert to the Claimant's solicitors in this regard. Based on our views on liability, we do not agree that the offer should be accepted. However, as the costs inclusive offer is within the Insured's excess, we are happy to be led by the Insured.

There is a risk that the Claimant may issue proceedings but given the robust arguments available, we do not think that settlement should be agreed at this stage.

Claim Reserve to be maintained/changed and reasons for reserve in accordance with [REDACTED]

[REDACTED] Reserving Philosophy- see Protocol
Nil – the Claimant's offer is currently within the Insured's excess

Cost Reserve to be set and reasons for reserve in accordance with [REDACTED]

Reserving Philosophy - see Protocol
Nil – no costs reserve is necessary at this stage

MPL – maximum probable loss including claim and defence costs (if appropriate)

Maintain at £30,000 for the time being

Claimant. The Letter of Claim alleges the following:

- That the Insured failed to provide a letter of engagement each time it was instructed
- That the Insured failed to obtain a properly executed/witnessed lease from the Tenant
- That the Insured failed to take any steps to contact the Tenant to secure the return of the lease duly executed
- That the Insured failed to notify the Claimant that the 2013 lease had not been executed prior to the expiry of the 2010 lease.

state that had the Insured acted properly, the Tenant would have been obliged to remain at the Property until 11 January 2016 and to pay the Claimant all rent and rates up to that date. In an attempt to mitigate its losses, the Claimant issued proceedings against the Tenant in May 2014. Settlement was negotiated with the Tenant's solicitors and the tenancy ended on 25 July 2014. The Tenant has paid each quarter rent which fell due up to 24 June 2014 as part of the negotiated settlement and the Property is now vacant.

We assisted the Insured in preparing a Letter of Response which was sent on 14 November 2014. The response denied liability despite admitting that the Insured did not chase for the return of the lease after it was sent the Tenant for re-execution. The Insured argued that this did not mean that the new lease was not in place and there was clearly an agreement as the Tenant remained in occupation of the property.

On 17 February 2015, the responded to the Insured noting the admission but disagreeing that there was an agreement in place as the Tenant had vacated the premises on the basis that the 2013 lease had not been completed. maintained that the Claimant had suffered loss caused by the fact that there was no properly executed lease and asked for the Insured's settlement proposals within 14 days, failing which, they would advise the Claimant to issue proceedings. Under separate cover, the Claimant made a without prejudice offer to accept £19,724.80 in full and final settlement of the claim. This is made up of £8,313 in respect of two quarter periods of rent, utility costs and rates, £7,896.60 in respect of the legal costs paid in the claim against the Tenant and £3,515.20 in respect of the costs in relating to the Claimant's claim against the Insured. The offer is open for acceptance until 3 March 2015.

In the WP letter, explained that two quarter periods of rent (at £2,625 plus VAT per quarter) and two quarters rates and utilities (totalling £2,013) have already fallen due on 29 September and 25 December 2014. On both of those dates, the Property remained vacant as the Claimant was unable to re-let the premises due to the condition it was left in by the Tenant. The Property still remains vacant and will be advertised to be re-let next week with the Claimant's property agent advising that this is likely to take up to 6 months.

Liability

The Insured appear to maintain the view that they are not liable as there was clearly an agreement as the Tenant initially executed the lease (albeit not properly) and remained in occupation of the Property.

We are concerned that the lease may not be an enforceable contract if it has not been validly executed. However, we have sought internal advice from the Real Estate department who have advised that as the lease is a short lease (ie. a lease that does not exceed 3 years), the lease may be created by a simple oral or written agreement and does not have to be created by Deed. In addition, there appears other arguments available to the Insured, namely, that the Claimant should have gone after the guarantors to the lease and that in any event, the Claimant has accepted surrender of the lease through his own actions.

On this basis, we will advise the Insured that in our view, they should continue to maintain a robust stance and revert back to the Claimant raising these arguments.

[Redacted]

From: [Redacted]
Sent: 19 February 2015 13:10
To: [Redacted]
Subject: [Redacted]
Insured: [Redacted]; Claimant: [Redacted] Your Ref: [Redacted]
Our Ref: [Redacted]

SOL-ITEM-ID: [Redacted]

Dear [Redacted]

Thank you for your email of 17 February 2015 in respect of the above matter. I have now considered the correspondence and without prejudice offer received from [Redacted]

It is my view that the Insured should continue to robustly defend this claim and it appears to me that the Insured are able to raise the following arguments:

- 1) S52 Law of Property Act 1925 states that short leases (a lease of not more than 3 years) may be created by a simple oral or written agreement and do not have to be created by deed (ie. signed, witnessed and delivered). The lease in this case would be classed as a short lease as it was for 3 years exactly, therefore, on this basis, the lease was agreed when it was signed by [Redacted]. It does not matter that it was not validly executed.
- 2) The Claimant could have pursued the guarantors that were party to the lease. Has the Claimant done this and if not, why not?
- 3) In any event, the Claimant has accepted surrender of the lease through his own actions by treating the property as his own. He has accepted possession unreservedly and gone into beneficial occupation of the property. In addition, if the Claimant has accepted the keys back from [Redacted], this is also another indication of accepting possession.
- 4) The Claimant compromised his claim in July 2014 when an agreement was reached with [Redacted]. Section 3 of the Settlement Agreement states that:
 "[Redacted] and [Redacted] each release the other party from all its obligations contained in and all liabilities whatever under the lease or any other Deed or document supplemental to the 2010 Lease, other than this Deed, whether past, present or future and all damages, actions, proceedings, costs, claims, demands and expenses arising from such obligations and liabilities in respect of rent, gas, water and electricity (and any other utility costs), non-domestic rates and taxes only."

If the Insured agrees with the arguments outlined above, I suggest that the Insured prepares a draft letter for my prior approval in this regard. However, as the Claimant's offer is within the Insured's excess, I am happy to be led by the Insured as to their proposed way forward.

Please let me know how the Insured wishes to proceed.

Kind regards

[Redacted signature block containing contact information]