

Write it down!

Ruby Keeler-Williams explains why contemporaneous notes are your best defence should a professional dispute arise

In the current climate of professional negligence claims, the phrase 'if it isn't written down, it didn't happen' has never been a better mantra to live by.

Whether you are an accountant or tax advisor advising on complex planning, a solicitor giving verbal advice during a negotiation or a trustee managing an asset on behalf of beneficiaries, the ability to evidence your actions and the rationale behind them could be the key difference between resolving a potential dispute and a costly judgment.

Contemporaneous notes (which are a written record made at the time of an event) can be extremely persuasive evidence if you are facing a potential professional negligence dispute.

A core element of our practice is professional negligence and we have obtained many multi-million-pound awards for claimants and successfully defended many claims. I have seen the importance of this issue in practice.

In this article, I will explore why contemporaneous notes are vital; the risks of relying on memory alone; and real-life case law, where note taking or lack thereof made a difference. I'll also set out some practical steps professionals can take to protect themselves.

Memory is fallible

Human memory has its limitations, particularly in fast-paced and high-pressure environments. Over time, memories degrade or become distorted.

Even traumatic events that people may think are deeply embedded into memory are subject to distortion. A good exploration of this topic can be seen in the 2013 Paper '[The neuroscience of memory: implications for the courtroom](#)' published by Lacy JW, Stark CEL. Of particular relevance to this article is the section regarding distortion in an original memory after being exposed to misleading information related to that memory. In this context, in the absence of written notes setting out the events and rationale behind them recorded at the time, the language used when being questioned (for example, by the insurer defending your claim) about events that have previously occurred can have a significant impact on the accuracy of the recall.

If your memory is distorted you can appear an unreliable witness, however earnest your intentions. If you make contemporaneous notes you can refer back to these if a dispute arises and ensure that your recollection is accurate.

Objective evidence preferred

If a dispute arises it often involves both parties recalling events in a conflicting manner. In the absence of a written record it is up to the court to determine whose recollection is more accurate.

Contemporaneous notes serve as a more objective account, in that they were typically recorded before a dispute was contemplated, meaning that the recollection is not tinged by bias.

Making a contemporaneous note, especially when giving verbal advice, can also help in ensuring that your memories of events are detailed rather than vague.

An example of this in the context of recalling a verbal discussion can be seen in the study ['How Contemporaneous Note-Taking Shapes Memory for Conversation'](#) published by Brown-Schmidt S, Jaeger CB, Evans MJ, Benjamin AS. This study involved two parties having a verbal discussion, with one party making contemporaneous notes following the conversation. One week later, both parties were asked to recall the conversation and the study showed that the party that made notes recalled more details of the conversation than the party that did not.

Maintaining records is not just best practice; it is often a regulatory requirement. Most professional bodies expect members to maintain adequate records to justify their decisions, advice given and communication with clients.

Examples include:

ICAEW: Requires members to keep sufficient records to demonstrate compliance with standards and obligations.

SRA Code of Conduct: Mandates that solicitors keep records to justify actions and maintain transparency.

FCA: Emphasises record-keeping as part of senior management and conduct responsibilities.

Case law

Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) is one of the leading cases on the reliability of witness evidence in the context of litigation.

Here, the now Lord Leggatt (then Leggatt J) was asked to evaluate witness accounts of events that had occurred years earlier. In his judgment, he drew on psychological research to caution against placing too much weight on a witnesses confidence in their recollection.

At paragraph 20 of the judgment, Leggatt J observed that recollections may become entangled with subsequent narratives and documentation, making them less reliable than they may appear. Even when a witness appears sincere and confident, that confidence is no guarantee of accuracy, especially where they are attempting to recall what they believed or felt at the time.

His guidance at Paragraph 22 was of particular relevance to this article, as he stated that: "...the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts... Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth."

This approach has been cited in many subsequent judgements and codified via Practice Direction 57AC of the Civil Procedure Rules, which applies to cases in the Business and Property Courts. The appendix to PD57AC sets out that witness evidence should be based on actual recollection rather than retrospectively constructed from documentation. This witness evidence can then be contrasted at trial with any contemporaneous documentary evidence.

Professionals should take from this case that the courts may distrust your recollection, however strong your belief as to its accuracy, if it contradicts your own written records (or worse so if no written record exists).

The *Simetra Global Assets Ltd v Ikon Finance Ltd* [2019] 4 WLR 112 case was a successful appeal to order a retrial of a matter before a different judge in the commercial courts. The matter involved dishonest assistance in a fraudulent Ponzi scheme.

Of particular relevance to this article are the comments at Paragraph 48 of the Judgment: “In this regard I would say something about the importance of contemporary documents as a means of getting at the truth, not only of what was going on, but also as to the motivation and state of mind of those concerned. That applies to documents passing between the parties, but with even greater force to a party’s internal documents including emails and instant messaging. Those tend to be the documents where a witness’s guard is down and their true thoughts are plain to see. Indeed, it has become a commonplace of judgments in commercial cases where there is often extensive disclosure to emphasise the importance of the contemporary documents. Although this cannot be regarded as a rule of law, those documents are generally regarded as far more reliable than the oral evidence of witnesses, still less their demeanour while giving evidence...”

The recent case *Jaffe & another v Greybull Capital LLP & others* [2024] EWHC 2534 (Comm) involved a clash of recollections between the parties, specifically as to whether the representative of Greybull Capital LLP made fraudulent misrepresentations in a meeting in October 2026.

The Judge deemed both witnesses to be ‘patently honest and truthful’ and as such had to determine which of their recollections to prefer. The Judge cited both *Gestmin* and *Simetra* in their judgement.

Ultimately, the Judge found that there had been no fraudulent misrepresentation and a key reason for this decision was that one party’s contemporaneous note was in fact a reinterpretation of incomplete handwritten notes taken during the lengthy meeting and had the potential to have been tainted by post meeting discussions.

The case of *Mehjoo v Harben Barker* [2014] EWCA Civ 358 was an appeal following the first instance judgment, which found a duty of care that was breached by the accountancy firm failing to advise a non-domiciled client about the availability of a tax shelter.

This was appealed on the basis that this fell outside the documented agreed scope of work.

In this matter, the Court found in favour of the accountants, partly because the engagement letter and contemporaneous file notes demonstrated that a limited scope had been agreed.

Professionals can take from this that contemporaneous records not only help prove what work was completed, but also what was not included in your remit.

Conclusion

For professionals working in high-risk environments, the ability to demonstrate what was done, why it was done and when is vital. Contemporaneous notes are not just a matter of good practice, they act as a safeguard in future disputes. As the courts have made clear, where recollection fails or is contested, a contemporaneous written record often provides the most persuasive evidence.

Yet, note-taking is just one piece of the wider picture. Maintaining robust compliance, managing risk effectively and responding quickly to potential claims all form part of a sound defence strategy.

This is where we can help. Our focus is to give professionals the confidence that legal and regulatory risks are being actively managed, so that you can focus on your clients and your core work.

- Ruby Keeler-Williams is a Chartered Legal Executive, Elysium Law

Practical tips for professionals

1. Make note-taking a habit

After every client call or meeting make a short, written record. This should include the date, time, attendees, the issues discussed, the advice given and rationale behind it, decisions made and next steps. This can be done via a formal file note, email summary sent to all parties or internal system log.

2. Follow up verbal advice in writing

Send a short confirmation email setting out the advice discussed. This not only protects you but reinforces client understanding.

3. Use templates and checklists

Standard templates for client meetings, risk warnings and conflict checks make consistency easier. They also serve as prompts to ensure nothing critical is overlooked.

4. Record your scope of work and limitations

Make it clear what you have and haven't been asked to do. Record whenever you advise a client to seek other expert input (for example legal advice).

5. Store notes securely

Store contemporaneous records in a secure, backed-up system that can be accessed by your colleagues. Avoid Post-it Notes, loose paper or undocumented phone calls.

6. Train your staff

Ensure that you and your team understand that note-taking is a defensive tool, not just an administrative burden.