

How to handle a negligence claim

Matthew Sharp explains how to deal with a complaint or potential negligence claim as an accountant or tax specialist

For most accountants and tax specialists, there are few moments in practice that are more stressful than receiving a client complaint or a notice of a potential negligence claim.

This unwelcome surprise is potentially existential and at first seems to threaten one's reputation, client relationships, financial position and professional standing. But claims – or even the suggestion of them – are not uncommon in today's environment of heightened regulatory scrutiny, increasingly complex tax rules and well-informed clients or stakeholders.

The good news is that, with the right approach, you can manage the process calmly, protect yourself and often resolve matters more effectively than you might initially have thought possible.

This article sets out a practical roadmap for accountants and tax specialists when confronted with a claim or 'circumstance'.

First – don't panic!

A claim – or even a threatening letter from a disgruntled client – does not automatically mean you were negligent, nor does it guarantee financial or reputational catastrophe.

Starting with the basics: what is professional negligence?

Broadly, professional negligence occurs where a professional fails to perform their responsibilities to the standard of a reasonably competent professional in their position. Typically, it is advice given that is wrong or the failure to give advice when you were under a duty (requirement) to do so.

A claim of professional negligence requires there to be:

1. A duty of care. Did the accountant or tax adviser have an obligation to advise on the relevant issue? Was it within the scope of their engagement? This is why engagement letters, and their scope, are so important.
2. A breach of duty: The test is whether the advice or failure to advise fell below the standard of a reasonably competent accountant or tax adviser (as applicable). This is often judged in court using expert evidence.
3. Causation: If there was a breach of duty, has it caused a loss to the claimant?
4. Recoverability: The loss caused by the accountant or tax adviser's breach must be recoverable.
 - For example, there are strict time limits for claims under the Limitation Act 1980.
 - By way of further example, damages can be limited for 'contributory negligence' (when the client has partly caused their own loss).

Therefore, it is not enough to be wrong – the question is whether the advice (or lack of advice) conformed to proper practice and standards.

You may be reassured to know that statistics from insurers often show that many claims are resolved without payment, settled for modest amounts, or withdrawn entirely once the facts are scrutinised.

Remaining calm in the first moments after receiving a complaint or notice of a potential professional negligence claim will help you think strategically and avoid the mistakes that can often make matters worse, such as admitting liability too quickly via email or on a phone call or failing to preserve important documents.

Notify your PI insurer

This must be done without any delay and in compliance with your insurance policy.

Almost every professional indemnity (PI) insurance policy requires you to notify the insurer not only when a formal claim is made, but also (which is usually much earlier) when you become aware of a 'circumstance' that might reasonably give rise to a claim.

A 'circumstance' is wider than a claim. It might include:

- A client suggesting they have suffered a financial loss because of your work;
- Discovering an error in advice; or
- A client receiving a letter from HMRC indicating potential non-compliance caused by your advice.

Failing to notify your PI insurer promptly can create serious coverage issues. PI insurers may decline to cover a claim if they believe you delayed notification. If there is any doubt, the better approach is to err on the side of caution and notify your PI insurer.

Once you have notified the circumstance or claim to your PI insurer, take advantage of their expertise. PI insurers see hundreds of claims every year and can provide early strategic input. Most policies also give PI insurers the right to appoint lawyers to advise you at their expense.

If you are uninsured, or there is a dispute about coverage with your PI insurer, seek independent legal advice immediately. Time is usually of the essence, particularly if you are facing a claimant who is pressing for a response or threatening to issue proceedings.

Always secure your PI insurer's clearance before corresponding substantively with the claimant. If that is not possible, speak to a solicitor first.

Watch for deadlines

Professional negligence claims are often driven by strict legal or procedural deadlines. Claimants may strategically seek to impose artificial time pressure on you to push you into making admissions you would not otherwise make. HMRC also often works with statutory time limits for appeals and corrections.

Missing a deadline can damage both your legal position and your PI insurance coverage. As soon as you receive a letter hinting at a claim, diarise every relevant date and share it with your insurer or adviser.

Manage conflicts of interest

The ICAEW Code of Ethics and equivalent rules for other professional bodies are clear: you must avoid conflicts of interest that could compromise your professional objectivity. When a client suggests negligence, you must ask whether you can continue to act.

In many cases, the safest course is to advise the client to seek independent advice. Continuing to act while defending your own position risks compounding the problem. You could end up facing both a negligence claim and a professional conduct investigation.

Consider a second opinion

Sometimes, what looks like a client-damaging mistake can be remedied. In trust related cases, for example, doctrines such as the Hastings-Bass principle (which applies where, for example, trustees failed to consider all relevant factors when making a decision) and ‘mistake’ can in some circumstances allow transactions to be unwound. Similarly, adverse HMRC assessments usually can still be challenged through appeals, judicial review or negotiated settlement processes.

If your PI insurer appoints solicitors, remember that they act both for you and for the PI insurer. While their advice will usually be robust, you are entitled to seek independent legal input, particularly on the merits of the claim and strategy.

Preventing escalation

The best way to manage claims is to prevent them from arising in the first place. When a client raises concerns – however minor they may seem – treat them seriously. Use your firm’s complaints process to give structure and transparency. In many cases, offering a proper explanation or an internal review can defuse tension before lawyers become involved.

It is often valuable to ask a colleague who was not involved in the original work to review the issue. A fresh pair of eyes can spot both risks and solutions you may have overlooked.

Documents and privilege

One of the most sensitive areas in claims handling is document management. In litigation, disclosure obligations are wide and onerous. Claimants’ lawyers will typically request internal correspondence created when the issue first arose. In my experience, those “oh sh**!” moment emails – the immediate internal reactions to discovering a potential error – can be highly damaging if produced in court.

Crucially, not all internal communications are legally privileged. Privilege generally only protects confidential communications with solicitors for the purpose of giving or receiving legal advice, or documents created for the dominant purpose of litigation. Casual internal emails between colleagues may well be disclosable.

Practical document rules

- Be careful what you put in writing if a problem arises.
- Avoid internal debate or discussion by email.
- Seek advice on document management from your PI insurer or solicitor.
- Never destroy or delete documents once a claim or circumstance has been identified. Destruction can be seen as misconduct and may make matters worse.

Conclusion

No accountant or tax specialist wants to face a negligence claim, but they are a fact of professional life. The difference between a career-damaging dispute and a manageable

problem often comes down to how you react to a complaint or notice of a potential professional negligence claim in the first hours and days.

The key lessons are:

1. Don't panic – many claims resolve without payment or reputational harm.
2. Notify your PI insurer immediately of claims and circumstances.
3. Manage conflicts of interest in line with professional ethics.
4. Seek legal advice early and obtain second opinions.
5. Use internal complaints procedures and internal reviews to defuse issues before they escalate.

Above all, remember this is general guidance only. Always refer to your PI insurance policy and professional body rules for specific requirements and obligations. When in doubt – seek professional advice from a relevant and qualified solicitor.

Handled correctly, a complaint or potential claim does not have to define your practice or you. Handled poorly, it can escalate into something much larger and potentially career-defining. Whether you handle it correctly depends largely on how you prepare and then engage with the potential claimant.

- Matthew Sharp is a Partner at Brown Rudnick LLP