

Name: [REDACTED]

Membership No: [REDACTED]

**1. Competency: 3**

Learning Outcome: 3.2

Take accurate instructions

**2. Evidence provided:**

Request for Instructions ("RFI"), email chain with client, email instructions to Panel

**3. Outline how the evidence demonstrates you meet the outcome:****Using appropriate techniques, take accurate instructions from your client/service user:**

This is a matter where I was acting for my client (an insurance company) in the defence of a professional negligence claim against one of their insured architects ("the Insured"). Specialist solicitors ("Panel") were appointed to take forward the defence of the claim on behalf of my insurer client and the Insured. With this arrangement, Panel report to me with their recommendations and I then seek instructions from my client.

In this situation, I sought instructions from my client in the form of a RFI (a pre-agreed document with my insurer client). My RFI set out a clear background to the claim and the nature of the instructions I was requesting. I sought instructions in respect of increasing the estimates held on the file and instructing Panel to settle the claim on the best possible terms up to a certain figure.

**Confirm with client/service user the instructions:**

In this case, the client initially confirmed their instructions in respect of the estimate increases in writing. I then reverted to my client to confirm their instructions in respect of the settlement authority as this element was still outstanding. The client responded confirming further instructions in writing.

**Evidence of taking and confirming the instructions:**

My email correspondence with the client shows that instructions were sought and confirmed by the client. The email to Panel providing instructions demonstrates that my client's instructions were carried out.

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

I recognise the importance of taking accurate instructions from clients and the need to revert to the client for clarification if needs be. I understand the importance of providing my client with a clear and detailed summary of the claim in order that they can give instructions without the need for requesting further information.

**5. Completion date: 24 September 2014****6. Signed: (applicant)**

[REDACTED]

Date:

17/04/15

**7. Signed: (supervisor)**

[REDACTED]

Date:

5/6/15

## Request for Instructions

Account:			Lead/Follow	
Requested By:			Date:	16 February 2015
Solcase Reference:			Year:	
Insured:			Claimant:	
Limit of Indemnity:			Excess:	
Policy Period:			Policy Number:	
Panel:			MPL:	Mediation/ trial date: TBC
Type of Risk:				

	Existing Estimate	New Estimate	Billed/Paid to date	Incurred (ie New Estimate plus Billed/Paid to date)
<b>Claim costs (including claimant costs)</b>	€230,000.00	€370,000.00	Nil	€370,000.00
<b>Defence costs (including all disbursements)</b>	€1,207.36	€31,145.52	€83,854.48	€115,000.00

**Referral trigger ( delete as appropriate)**

1. Over £250,000 DA,

**Summary of Claim**

The Plaintiffs appointed the Insured (architects) in respect of works to their property at [REDACTED]. The Insured's responsibilities included preparing the design and specification of the foundations, inspecting/supervising the works and certifying compliance with Building Regulations. Despite having concerns with the standard of workmanship, the Insured proceeded to certify the works up to the roofing stage in March 2007.

Cracking became apparent at the Property by April 2008 and the Plaintiffs appointed loss adjusters to investigate, who concluded that the cracking was due to differential settlement of the foundations. Proceedings were served on the Insured in November 2010 and [REDACTED] were appointed as Panel. Panel made an agreement with the Plaintiffs that a Statement of Claim would not be served as the parties would progress matters on a WP basis.

Investigations were carried out into the cause of the cracking which was unfavourable to the Insured. Accordingly, our expert was asked to prepare a scheme for remedial works which was provided to the Plaintiffs on a WP basis. Queries were raised in February 2011 regarding an element of the works which was not deemed viable and Panel's offer of €50,000 was declined as the Plaintiffs had not yet



obtained advice from a quantity surveyor as to the likely cost of the works.

A Statement of Claim was served in July 2012 alleging the Insured failed to adequately supervise the works, did not provide a suitable design or specification for the foundations and certified inadequate foundations. A Notice for Particulars was issued in October 2012 seeking further details, in particular on quantum. There was a significant delay in receiving a response but Panel finally received the Plaintiffs' Replies in March 2013 which included a booklet of costings, vouching documentation and a report prepared detailing the estimated costs of demolition and re-build or, in the alternative, remedial works.

Advice was obtained from a quantity surveyor, following which, Panel were instructed to agree settlement of the claim up to €230,000 inclusive of costs. An all-in offer was made in October 2013 for €210,000. This was rejected by the Plaintiffs who stated the sum offered was significantly below the amount they were willing to accept. No counter-offer was received but the Plaintiffs proposed a WP meeting take place in early 2014.

Panel reported in January 2014 recommending that they attend settlement talks with a view to settling the claim up to €350,000 (net of excess) [REDACTED] agreed on strategy but advised they would revert in respect of the proposed settlement authority. However, Panel provided an updating report in April 2014 advising that the Plaintiffs refused to attend a WP meeting. The report also requested an increase to the estimates and settlement authority. We obtained instructions for Panel to check the contractor's financial standing and arrange a meeting of the experts. Thereafter, updated recommendations were to be provided in respect of the estimates.

There were delays in arranging the experts' meeting due to outstanding fees. Our expert stated he would not carry out any further work until his invoice was paid. Steps were taken to make payment. Accordingly, the QS meeting was arranged for 30 September 2014 with the updated advices expected to be received shortly thereafter.

Panel pleaded contributory negligence of the contractor in the Insured's Defence and the Plaintiffs subsequently issued separate proceedings against the contractor. However, Instructions were requested urgently in December 2014 to agree that the contractor may be released from the proceedings. The Plaintiffs stated that they would seek reimbursement from the Insured if we refused. In view of this, and as the contractor had dis-instructed its solicitors and had no financial standing, we agree to the contractor being released from the proceedings.

#### **Current position**

In Panel's updating report dated 10 February 2015, Panel advise that our QS expert's revised quantum report has been received following the QS meeting in September 2014. Panel comment that the report has only been received recently as our expert was awaiting information and updated figures from the Plaintiffs' expert which was eventually provided in December 2014.

Our QS expert's updated costs estimate is €184,795 excl VAT. The Plaintiffs' QS expert's estimate as at December 2014 is €238,512 excl VAT. Our QS expert advises that there is scope for possible savings of up to €34,078 from the total estimate, however, these were not agreed at the WP meeting. Unfortunately, the outcome of the WP meeting is that our expert's costs estimate has increased due to further deterioration of the substructure as stated by the Plaintiffs.

The Plaintiffs' solicitors served a Notice of Intention to Proceed on 19 December 2014 and served a Notice of Trial on 22 January 2015. Panel comment that the proceedings have not yet been certified



as ready for trial by the Plaintiffs' Counsel but Panel expect them to progress this shortly.

### **Liability**

There is clear exposure in this matter. Expert evidence has been obtained by Panel which is not only critical of the Insured's design but states the Insured was not qualified to prepare such a design. Our expert also advises that, whilst the cause of the cracking appears to be the result of the foundation raft not being adequately compacted, the issue may have occurred in any event as the stone specified by the Insured was not appropriate. Finally, the Insured certified the works knowing that they were inadequate and sub-standard.

### **Quantum**

The Plaintiffs are seeking;

1. The cost of demolishing and rebuilding the Property (€286,700 + VAT i.e. €344,040) or, alternatively, underpinning and reinstating the house and associated works (€270,104 including VAT)
2. €22,000 for expert fees, insurance costs and relocation costs.
3. An unquantified sum for diminution in value.

Advice received from our quantity surveyor estimates the cost of the remedial works at €211,042 including VAT.

### **Estimates**

An increased claim estimate of €370,000 (net of excess) is recommended made up of €260,000 for the claim and €110,000 for Claimant's costs. This is on the basis that:

- Settlement is agreed by way of negotiated settlement prior to significant trial preparation
- Up to €230,000 will be offered for remedial works including VAT. This is approximately mid-way between our respective QS experts' estimates. Panel recommend negotiating on their estimate of €211,042 but recommend allowing for a higher contribution.
- The other heads of loss will be settled for up to €25,000 (i.e. expert fees etc)
- General damages will be agreed at €5,000.
- The Plaintiffs' costs will be €110,000 to include further and extensive expert involvement, further investigations and Counsel's fees and costs to conclusion by settlement. However, this estimate does not allow for any trial preparation costs.

Panel also recommend an increase to the defence cost estimate to €115,000 to account for the additional work that has been required to date due to the Plaintiffs' rejections of settlement offers and refusal to negotiate to date. This estimate will allow for a top-up tender, attendance at a settlement meeting and negotiations thereafter if unsuccessful. It does not allow for trial preparation costs.

### **Case strategy**

Panel recommend proposing a settlement meeting urgently before the Plaintiffs apply for a trial date. At any settlement meeting, Panel request settlement authority up to €370,000 inclusive of costs. If settlement negotiations are unsuccessful, Panel recommend making a top-up tender following the settlement meeting when further information on the Plaintiffs' expectations is known. Panel will report on this in due course if necessary.

### **Details of Instructions Sought:**

1. That the claim estimate is increased to €370,000 for the claim and Claimant's costs
2. That the defence costs estimate is increased to €115,000
3. Panel are given authority to settle on the best possible terms up to €370,000 before the matter



proceeds any further towards trial.	
<b>Recommendations of Claims Handler:</b> Given the Insured's exposure, this is a matter that clearly needs to be settled as quickly as possible on the best possible terms. We agree that estimates should be increased and Panel given settlement authority and we would hope that settlement can be agreed sooner rather than later without the costs of trial being incurred.	
<b>Instructions Given:</b>  {**}	
<b>Estimate Changes:</b>	<b>Claim:</b> To be increased to €260,000
	<b>Claimant Costs:</b> To be increased to €110,000
	<b>Defence Costs:</b> To be increased to €115,000

[REDACTED]

---

**From:**  
**Sent:**  
**To:**  
**Subject:**

Hi [REDACTED]

I agree to this also.

Many thanks

[REDACTED]

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 24 February 2015 10:15  
**To:** [REDACTED]  
**Subject:** [REDACTED]

Dear [REDACTED]

Thank you for your instructions.

Could you also confirm if you are happy for Panel to be given settlement authority up to €370,000?

Kind regards

[REDACTED]

---

**From:** [REDACTED]  
**Sent:** 23 February 2015 11:24  
**To:** [REDACTED]  
**Subject:** [REDACTED]

Hi [REDACTED]

Thanks for the RFI below. I agree to the recommended estimate increase.



Kind regards

[REDACTED]

From: [REDACTED]

Sent: 17 February 2015 11:56

To: [REDACTED]

Cc: [REDACTED]

Subject: [REDACTED]

Importance: High

Dear [REDACTED]

Please find attached urgent RFI together with Panel report dated 10 February 2015 and QS report dated 23 January 2015 (referred to in Panel's report).

I look forward to receiving your instructions shortly. Please do not hesitate to contact me should you have any queries.

Kind regards

[REDACTED]

This email is sent for and on behalf of [REDACTED] LLP which is a limited liability partnership, registered in England and Wales (registered number [REDACTED]) regulated and authorised by the Solicitors Regulation Authority. Our professional rules may be accessed at [www.sra.org.uk](http://www.sra.org.uk). We use the word "partner" to refer to a member of the LLP or an employee or consultant who is a lawyer with equivalent standing and qualifications. A list of the members (all of whom are solicitors in England and Wales, exempt European lawyers or registered foreign lawyers), together with a list of those persons who are designated as partners, is available for inspection at our registered office, [REDACTED].

This email (and any attachments) is confidential. If it is not addressed to you, please do not read, disclose, copy or forward it on, but notify the sender immediately and delete it. Any legal advice in the message may be privileged and not disclosable in any court action. We have tried to ensure this email does not contain any viruses, but please check this before opening any attachments, as we cannot accept any responsibility for damage caused by a virus. Please note that we may intercept, monitor and store emails for the purposes of ensuring compliance with law, our policies and for audit purposes.

[REDACTED]

---

**From:**  
**Sent:**  
**To:**  
**Cc:**  
**Subject:**

[REDACTED]  
24 February 2015 13:49

**SOL-ITEM-ID:**

Dear [REDACTED]

Further to my email of 17 February 2015, I confirm the following instructions:

- The claim estimate will be increased to €370,000 (made up of €260,000 for the claim and €110,000 for Claimant's costs)
- The defence costs estimate will be increased to €115,000
- You have authority to settle on the best possible terms up to €370,000 inclusive of costs before the matter proceeds any further towards trial

Please continue to keep me updated of developments and revert to me as soon as possible if settlement negotiations are unsuccessful.

Kind regards

[REDACTED]