

At the recent IQPC conference, leading consultancy Legal Inc hosted a workshop entitled

### **THE ANATOMY OF PRACTICAL DISCLOSURE AND THE BODY OF EVIDENCE.**

As seasoned litigators will testify, there is often a huge gulf in theoretical best practice and the realities of disclosure on the ground. Using three client case studies, with those clients in attendance, the workshop looked at the key elements of effective disclosure, the challenges at the coal-face, the management of clients, process and technology, all with a view to helping delegates devise consistent and proven methodologies for successful litigation. Central themes included:

- Information retention/information management – how prepared are law firms and their clients?
- Compliance – what are the issues when providing data to law firms?
- Logistics – how do you cope with huge data volumes efficiently, accurately and cost effectively?
- Legal review – how are practitioners dealing with CPR and disclosure obligations at the coalface?
- Client handling – how do litigators ensure client relationships stay on track?
- Production environments - how can the minefield of paper and/or electronic disclosure best be negotiated?

The session was moderated by Legal Inc's Andrew Haslam and followed on from the medical analogy by adopting a theme based on the US hospital drama series ER, with each of the speakers adopting a persona from the show.

- Lovells' **Bill Onwusah** presented on the "healthy patient", that is a description of a well planned and executed case and how you go about achieving this. He was representing the young, fresh faced idealistic view of the world and hence was Dr John Carter.
- **Vince Neicho** from Allan & Overy talked about the "sicker case", that is how events and individuals can conspire to thwart your well laid plans, and again what do you do about it, and how you can use strategies to try to minimise the impact of these events. A more world weary view of the situation, though still with aim of saving the patient, he was Dr Luka Kovac
- **Bill Sillett** of the enforcement division of the Financial Services Authority, took people through the "basket case", that is organisations or individuals who are not prepared at all for disclosure and the (sometimes fatal) effect this can have upon both their business and their own personal livelihoods. His patients were often desperate cases on the ER table with CPR and resuscitation sometimes failing to bring them back to life, in fact he was Dr Mark Greene.

Bill Onwusah took the delegates through the EDRM model with lots of sound practical advice on how to run a case "in an ideal world". What came over, was that with planning and the right approach, it was possible to achieve significant savings in both time and money, with the key being early filtering

and reduction in the volume of documents. Focusing on the processes on the left hand side of the EDRM model and taking your medicine in the form of control of information management and use of early case assessment tools, could indeed keep the doctor away, or at least make sure his bill was dramatically reduced.

In the real world, Vince Neicho explained the pitfalls that await those individuals and organisations that are not ready for the demands of litigation, fail to communicate with the other side within the spirit of the CPR, or do not take sufficient care with their processes and approach to handing electronic disclosure. Covering some of the same ground as Bill Onwusah, he used various real life anecdotes to show "how not to do it".

In the final session, Bill Sillett took the audience through the very real dangers that await those foolish enough not to take the FSA seriously. He warned that the regulators are taking a tougher approach, based on targeting individuals rather than organisations. Failure to co-operate can be very expensive, both in terms of financial penalties and in the revocation of licences to trade in certain areas, effectively killing an individual's ability to work at all. On a brighter side he reinforced the concept that being prepared for an investigation by having the rights tools and service providers in place beforehand can pay off handsomely and sometimes even cause the regulators to go away.

With a final continuation of the ER theme, Andrew Haslam undertook the role of the seasoned practitioner, the expert that could save the day no matter what the overwhelming odds against were, he was indeed Legal Inc's very own Dr Doug Ross, and that fact he claimed George Clooney as an avatar was merely a reflection of his own ruggedly handsome good looks. (ED: "dream on, Andrew, dream on").

He summarised the three sessions and then led an interactive debate around a top ten list of points for delegates to take away:

1. A clear, effective and enforced records management policy will save you time and money. This should address not just what you should keep, but what you can safely destroy.
2. When litigation is anticipated, establish an e-disclosure committee and ensure that Legal and IT are represented and talk to each other (whatever the size of the organisation).
3. Use the e-disclosure committee to establish the "who", "what" and "where" of your data, and how to preserve it if you need to.
4. Collect wide, produce narrow.
5. Agree the keywords or any other searching methodology upfront.
6. Ensure that you properly comply with any obligation to "meet & confer" (or any similar requirement).
7. Don't be afraid to shop around and to demand aggressive pricing from suppliers.
8. Be aware of the available technology and identify the solution(s) that meet the case's requirements (it will help, honest).

9. Ensure the legal team are supported with good project management for control and provenance of data.
10. If in doubt, seek professional advice.

There was lively interaction between the speakers and delegates over the various tips, with a number of “real life” questions being posed and answered by all four panel members. After 3 hours there was just time for a quick play of the ER theme tune and it was time to leave the hospital behind and for delegates to begin the rehabilitation process of bringing their information to a fit and healthy state.

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