

**Professor Dominic Regan and Dr Mark
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conversation notes following the recent
Supreme Court Judgment - Menzies v
Oakwood**



I really don't think that this is a particularly important case. Indeed, I am surprised that the SC even took an interest in it.

In practical terms, where a solicitor's practice is well managed, it will have only a marginal effect on their day-to-day life. Obviously, if a solicitor wishes to have the benefit of the 12-month limit, then (a) they should make sure that their retainers contain a reasonably clear billing policy, and (b) they should obtain instructions from a client to pay a bill in the amount stated prior to moving any monies into the office account. That may be so, but many solicitors will already be doing this. The sector in which this is most commonly not being done is PI and clinical negligence (where deductions are often made at the same time as sending out bills), but it will not be difficult for such firms to change their practices. All they need to do is to send out bills (without attaching payment of the damages) and to ask clients to accept the amount that is billed prior to paying then the damages. This is very far from being a seismic shift; indeed, it is very similar to what conveyancing solicitors and family practitioners have been doing for decades.

So, going forwards, this is not going to change a great deal. There will, obviously, be solicitors who get it wrong, but most well-run firms will be fine. Certainly, I do not agree with those costs practitioners who are saying that Menzies justifies a complete overhaul of their retainers; at most, all that is required is to ensure that what is said in the retainer marries up with the firm's billing practices.

The most important impact of this case, however, will be its retrospective effect. There will, no doubt, be a flurry of cases in which clients will try to revive assessments that were previously believed to be time-barred. The court is likely to be get fed up with that pretty quickly, however. In particular, in most of these cases, the client will still have to show 'special circumstances', and I can see that the court will be fairly selective in what it allows to proceed to an assessment. In my view, the fact of payment (and especially payment without demur) will be seen as being factor that will militate against ordering that there be an assessment. So, I suspect that many cases will fall by the wayside.