

- Lessons from overseas ■ Are you qualified to supervise? ■ People risk  
 ■ TAG ■ Money Laundering ■ FRED 39 ■ Law Society visits ■



Petronas Towers, Kuala Lumpur



*This newsletter is a general guide. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice. Subjects covered change constantly and develop. No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this.*

#### Partners

**Frank Maher**  
**Sue Mawdsley**

Legal Risk  
 28 Bixteth Street  
 Liverpool  
 L3 9UH  
 England

Tel: 0845 330 6791  
 Fax: 0845 330 6792

International Tel: +44 151 231 6230  
 International Fax +44 151 231 6231

Email: [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)  
 Web: [www.legalrisk.co.uk](http://www.legalrisk.co.uk)

Regulated by The Law Society



Recommended for professional indemnity and risk management advice, areas of specialism including money laundering compliance advice.

**Lessons from Overseas** Frank Maher and Sue Mawdsley addressed a major international professional indemnity conference on 17-18 November 2005 along with speakers from Australia, Canada, Hong Kong, Malaysia and Singapore. Speakers included insurers, brokers and representatives of a wide variety of indemnity schemes - a master policy, a mutual, and various hybrid schemes involving elements of mutual insurance combined with commercial insurance. Risk management strategies are integral to these schemes, and have been for many years in some cases.



The significance of self-insurance in so many schemes overseas is a sharp reminder of the high cost of claims against lawyers worldwide, begging the question for how long firms in England and Wales will continue to enjoy the relatively low premiums which they have enjoyed in the six years of the open market. If one major player withdrew from the market, perhaps for wholly extraneous reasons, it would alter the whole picture dramatically, just as valuers were hit by lack of available insurance in the 1990s. Firms need to ensure not only that they are an attractive proposition for insurers in the current climate but that insurers would also want their business in a more competitive one where there might be insufficient cover available for all firms - like steering the Titanic away from an iceberg, it takes time for developments in a firm's risk management to filter through to the claims experience.

Many schemes had experienced difficulties over a lack of unified claims data - something we had in England and Wales until the demise of Solicitors Indemnity Fund.

Positive learning experiences from the various schemes were many: from the scheme in England and Wales, they might include the problems of successor practice cover, issues over firms taking overly large excesses and leaving others to pay them, and variable standards of claims handling with some insurers' panel firms. Successor practice cover is complex, with no provision for firms to decide between themselves (unlike Scotland), nor, more significantly, any simple facility for a final, binding determination of the identity of a successor - an arbitration under the rules is only binding on the insurers involved and the firm itself is not even a party to it.

*For help with risk assessment or successor practice issues contact [frank.maher@legalrisk.co.uk](mailto:frank.maher@legalrisk.co.uk)*



Ragunath Kesavan, Secretary of the Malaysian Bar and Frank Maher

**Publication: Risk management for law firms** This comprehensive guide to managing risk within a law firm, by Frank Maher and published by Managing Partner magazine in its best-practice series, will be available shortly. It will provide an in-depth analysis of key risk areas within law firms and help firms develop a strategic approach to managing these issues with clear examples - an opportunity to learn from other people's mistakes. It will also contain hot tips on professional indemnity issues. **Price £195. Contact: [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)**

**Are you qualified to supervise?** Solicitors Practice Rule 13 requires firms to have a partner 'qualified to supervise' (which requires 36 months post-qualification experience in the past 10 years and 12 hours management training). Many firms rely on transitional provisions allowing the solicitor to complete the management training by December 2009. However, the proposed new conduct rule 5.02 could mean firms need to satisfy the requirement rather sooner - as early as 2006. We will be offering highly practical, CPD accredited training to satisfy both the current and the proposed requirements - the aim: to improve your risk and profitability.

*Contact: [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)*

**People risk** People within the firm are the main source of risk. The risk can be reduced if they understand what is expected of them, and how they fit into the team to achieve its objectives. Many firms have experienced training from people who do not understand law firms and lawyers.

With this in mind, Legal Risk is preparing a package in personal development and team building - by solicitors for solicitors - with integrated risk management training. The aim is to tailor this to the needs of the individual firm, large or small, including partners and staff.

*Contact: [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)*

*Continued...*

## The Accident Group

Judgment in **Goshawk v Bank of Scotland** (14 December 2005) deals with an important point on the Consumer Credit Act. For the Lawtel summary see <http://www.legalrisk.co.uk/ftp/documents/goshawkvbankofscotlandlawtelsummary.pdf>

More claims since our last newsletter may increase attention on the indemnity issue which is highlighting the conflict with insurers. We are looking at insurance solutions for firms wishing to spread the cost tax efficiently and equitably between partners over a period of time.

Contact: [frank.maher@legalrisk.co.uk](mailto:frank.maher@legalrisk.co.uk)

## Money laundering post-Bowman v Fels

New Law Society Guidance - essential reading for conveyancers (22 December 2005) - is on the web - see

[http://www.lawsociety.org.uk/documents/downloads/ML\\_Conveyancing1205.pdf](http://www.lawsociety.org.uk/documents/downloads/ML_Conveyancing1205.pdf)

Solicitors continue to experience practical problems post-**Bowman v Fels**, as highlighted in our October 2005 newsletter, particularly the danger of litigation lawyers mistakenly thinking they are now outside the system, and the problem of conflicts meaning that firms may have to cease acting and be unable to charge for substantial amounts of work done. Firms need to review their policies and procedures.

We have received further guidance from the Law Society on the issues raised in our October 2005 newsletter relating to pre-litigation cases and Alternative Dispute Resolution. The Law Society view remains that ADR is covered by the decision and that acceptance by prosecuting authorities of the status of the Law Society guidance goes beyond section 330, Proceeds of Crime Act 2002 and the Money Laundering Regulations 2003.

Advice and information is available in our Special Report, priced at £250 plus VAT. We also provide fixed fee reviews of policies and systems as well as in-house training and helpline support services. Many practices are now updating their training firm-wide. Seminars and workshops from £850, £1550 for two seminars on the same day, each plus expenses and VAT.

Contact: [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)

## Top 100 Professional Indemnity Survey

Legal Risk's Top 100 Professional Indemnity Survey 2006 will be published in February – with some interesting results and analysis of trends over the three years covered by the surveys.



## Accounting for uninsured claims and excesses

Recognition of potential liabilities for tax purposes (or lack of it) is an issue for law firms where there is uncertainty as to liability, as firms with exposure to The Accident Group claims will be more aware than most. The Accounting Standards Board is analysing responses to the consultation on Financial Reporting Exposure Draft (FRED) 39 which contains proposed amendments to FRS 12 on *Provisions, contingent liabilities and contingent assets*; if approved this may assist.

Given the impact which an assessment of such a liability may have on tax, firms will need to consider carefully how they assess the potential liability. Decision tree analysis, a concept which is better known in the United States, presents a possible solution.

Firms will also need to consider whether their assessment might be disclosable in litigation. The initial reaction would be that it was not strictly relevant, but the point may merit further thought: in a recent Australian case, **789Ten Pty Ltd v Westpac Banking Corporation** [2005] NSWSC123, Justice Bergin determined that legal professional privilege did not apply to solicitor's representation letters obtained by auditors. For FRED 39 see [http://www.frc.org.uk/images/uploaded/documents/fred39\\_web\\_optimized.pdf](http://www.frc.org.uk/images/uploaded/documents/fred39_web_optimized.pdf)

For solutions to claims problems or decision tree analysis, contact [frank.maher@legalrisk.co.uk](mailto:frank.maher@legalrisk.co.uk)

## Law Society visits – engagement letters

The Practice Standards Unit is increasing its visits to law firms. It previously focused on firms with complaints issues, but now aims to visit all firms in England and Wales to monitor compliance with the Practice Rules and to promote a commitment to practice excellence and client care in the profession. In anticipation, firms may wish to check their engagement letters against the requirements of the Solicitors' Costs Information and Client Care Code and Practice Rule 15. They might also usefully pay particular attention to their anti-money laundering compliance and revisions to it post-**Bowman v Fels**, and insurance mediation where some solicitors have been found wanting. A number of firms have sought our help.

Defective costs information is one of the main sources of complaint about solicitors. Terms such as 'disbursements' require explanation – 'expenses' is the preferred description.

The position on abortive costs also needs to be set out – a point of concern in view of the potential for conflict where client privilege prevents seeking consent from the National Criminal Intelligence Service. (See above, *Money Laundering post-Bowman v Fels*, and our October 2005 issue).

There is a focus on the tone set by correspondence, for example not saying that the letter is being sent because of a Law Society requirement; references to the Consumer Complaints Service (or, in many cases, the previous title of Office for Supervision of Solicitors) are thought to set the wrong tone at the start of a retainer.

For help with monitoring visits, engagement letters or terms contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)

**FRS 5/UITF 40** Concerns about the impact of taxation of partner work-in-progress were highlighted in our January 2004 and July 2004 issues. The proposed tax charge is to be ameliorated by provision spreading the impact over three to six years, according to the Chancellor's Pre-Budget Report but not for firms who have already made the change.

The provision affects accounting periods ending on or after 22 June 2005 making the extra tax payable at the end of January 2007, or January 2008, depending on their accounting year end. For a helpful note see [http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I\\_88773%7CMNXI\\_88773](http://www.icaew.co.uk/taxfac/index.cfm?AUB=TB2I_88773%7CMNXI_88773)

## Law Society's new E-mail Guidelines for

**Solicitors** The main changes in these revised guidelines (November 2005) deal with the important question of e-mail retention - electronic or paper? <http://www.lawsociety.org.uk/documents/downloads/emailguidelines.pdf> (see paragraphs 3.17 and 3.18).

**About Legal Risk** We are practising solicitors specialising in risk management, professional indemnity, partnership and anti-money laundering and other compliance issues. Our clients, both nationally and internationally, include law firms, accountants, property professionals, insurers, insurance brokers and lenders. We frequently advise law firms with coverage issues (including The Accident Group claims) and other problems with professional indemnity insurance – those with difficulty obtaining cover and successor practice issues.

- ▶ For enquiries on matters in this issue, contact [Frank.Maher@legalrisk.co.uk](mailto:Frank.Maher@legalrisk.co.uk) or [Sue.Mawdsley@legalrisk.co.uk](mailto:Sue.Mawdsley@legalrisk.co.uk)
- ▶ To request an electronic copy of this newsletter, update your contact details or to join the mailing list, contact [Libby.Ng@legalrisk.co.uk](mailto:Libby.Ng@legalrisk.co.uk)