



Law management e-alert

The e-newsletter of the Law Management Section

Issue 11 – November 2005

Contents

Welcome to the 11th issue of *Law management e-alert* – the electronic newsletter of the Law Management Section. This issue features the following articles:

News

- ▶ [Clementi White Paper released](#)
- ▶ [Solicitors urged to consider judicial appointments](#)
- ▶ [Report reveals “sexual bullying” of female trainee solicitors](#)
- ▶ [Help sought for legal sector research project](#)
- ▶ [Age discrimination consultation closed](#)
- ▶ [Free online legal information](#)
- ▶ [Financial benchmarking survey kicks off](#)
- ▶ [Launch of E-Business Unit and e-business newsletter](#)
- ▶ [Changes to sex discrimination regulations](#)
- ▶ [New Bill delivers on family friendly promise](#)
- ▶ [Training framework moves forward](#)
- ▶ [European Community to sign money laundering treaty](#)
- ▶ [Results of legal services market scoping study](#)
- ▶ [Participants sought for research into quality marks](#)
- ▶ [Consultation: advancing equality](#)
- ▶ [Guidance: money laundering](#)
- ▶ [Guidance: confidentiality and disclosure, entry, retention and competition](#)
- ▶ [FSA survey of law firms](#)
- ▶ [New LMS toolkit on business development](#)
- ▶ [LMS Internet Policy Toolkit: new chapter](#)

Infocus

- ▶ [Age discrimination: time to take action](#)
- ▶ [Risk management: cover your assets](#)

Upcoming events

- ▶ [Regional Lexcel seminars](#)
- ▶ [Profiting from the legal e-business revolution](#)
- ▶ [Risk management for the legal profession](#)

Recent publications

- ▶ [Blackstone's Guide to the Disability Discrimination Legislation](#)
- ▶ [Strategies and Practice in Law Firm Mergers](#)

Contact details

News

Clementi White Paper released

A package of proposals for reform of the legal services market was published in October by the Secretary of State for Constitutional Affairs.

The White Paper brings closer the prospect of competitive “one-stop shops” where consumers can access a range of legal and non-legal services and delivers on recommendations made by Sir David Clementi in his review of legal services, published in December 2004. The proposals will:

- set up an Office for Legal Complaints (OLC) to independently investigate complaints;
- set up a Legal Services Board (LSB) to regulate legal services; and
- enable different kinds of lawyers and non-lawyers to work together on equal footing to provide legal and other services.



Secretary of State for Constitutional Affairs and Lord Chancellor, Lord Falconer said: "We need to reform the legal services market to put consumers first. Legal services are crucial to people's ability to access justice for all. Consumers need and deserve legal services which are efficient, effective and economic. Our proposals will help deliver that".

The Law Society has welcomed plans for the implementation of the Clementi reforms. However, it says it is important that the new regulatory framework should not lead to disproportionate regulatory burdens on the legal profession.

Kevin Martin, Law Society President, said: "We are pleased that the government is finally taking steps to implement reforms. We have long promoted the need for a more flexible, consumer-focused, legal services market and new business structures for delivering legal services. We recognise that the proposed oversight body – the Legal Services Board – could reinforce public confidence in the way lawyers are regulated. But if the government is serious about light touch regulation, it would be better for regulatory powers to be vested directly in the front line regulators such as the Law Society, the Bar Council and ILEX.

"The legal profession has an important role in standing up for individuals against the State and defending the rule of law generally. The new regulatory arrangements need to respect the importance of having an independent legal profession. This means that the composition of the Legal Services Board should be demonstrably independent of government and the board should operate with a light touch."

The Department for Constitutional Affairs released a number of reports in September relating to research it commissioned following the Clementi report. They analyse some of Sir David's main recommendations, specifically: how to make an oversight regulator an effective partner of front line regulators; drivers for and benefits of external financing of law firms; internal incentives under various ownership structures; and the competition impact of restrictions on various forms of partnerships

More information: www.dca.gov.uk/legalsys/lreform.htm or www.lawsociety.org.uk

[▲ Back to top](#)

Solicitors urged to consider judicial appointments

The government recently stepped up its campaign to encourage more solicitors to apply for judicial appointments.



Kevin Martin, Law Society President, and Baroness Ashton, Parliamentary Under Secretary of State, are writing to 6,500 solicitors who recently became eligible for judicial appointment to promote careers in the judiciary.

The Law Society believes the greater use of part-time working, career breaks and adjustments for people with disabilities will increase the number and diversity of applicants.

Mr Martin believes these changes will appeal to solicitors considering judicial careers: "The Law Society has long campaigned for judges to be appointed using open and modern recruitment methods. Improvements to the way judges are appointed and greater career flexibility should prove to be incentives for more solicitors to consider judicial careers. We believe these changes will help to ensure that the best people are identified fairly from the widest pool of talent."

The DCA has published a judicial appointments booklet which will help solicitors decide if they have the right competences. The government also runs a shadowing scheme for would-be applicants and the Law Society operates training courses for solicitors applying for judicial posts.

Baroness Ashton said: "We are taking concerted action to encourage applications from a wider pool of candidates for judicial appointment. We very much welcome the profession's support and involvement in our drive to increase the diversity of the judiciary."

More information: judicialappointments@lawsociety.org.uk or www.dca.gov.uk/judicial/diversity/index.htm

[▲ Back to top](#)

Report reveals "sexual bullying" of female trainee solicitors

A recent report has found that female trainee solicitors are being blackmailed into accepting sexual advances from senior male lawyers in return for being offered jobs.



The report on calls received by the Trainee Solicitors' Group (TSG) helpline revealed that more than a quarter of the record 2,241 calls in the past year were from trainees who were being bullied, harassed or exploited. Calls to the helpline increased by more than 13 per cent on the previous year, with more than two-thirds of calls coming from women.

Trainees complained that they were being asked to perform menial tasks, such as cleaning the office lavatories, parking partner's cars or spending a day photocopying or on the reception desk. Some said they were bullied into going on dates with supervisors, while others said they received threats that their training contract would not be signed off if they did not comply with sexual advances.

Peter Wright, TSG Chair, said: "There is a sizeable minority of firms where this is going on, and the evidence is there in black and white, in the calls we receive. That is why we have supported the [Law Society's] [training framework review](#) group to introduce greater regulation of training contracts."

More information: www.tsg.org

Source: *Gazette*, 3 November 2005, issue 102/42, page 1 (www.lawgazette.co.uk).

[▲ Back to top](#)

Help sought for legal sector research project

Participants are currently being sought for a research project aimed at defining the influences that will drive business performance in the legal sector over the next 10 years, to demonstrate where effective use of technology will produce improved results.



The research is being undertaken by business development consultants Practical Solutions for the Legal Software Suppliers Association (LSSA) in association with Baker Tilly and Opportunity Consulting.

Lawyers and senior managers (IT, finance, marketing, HR, chief executives, managing partners and others) in firms of all sizes are being asked to take part, with contributors eligible to receive rewards for participating. Findings will be presented to the legal profession in February 2006.

More information: www.inpractice.co.uk, acarton@inpractice.co.uk or 0161 929 8355

[▲ Back to top](#)

Age discrimination consultation closed

The Department of Trade and Industry (DTI) has closed its consultation on proposals to legislate on age discrimination after receiving 350 responses.



The consultation documentation was released with draft regulations that will make discrimination on the grounds of age unlawful in the United Kingdom. Subject to Parliamentary approval, the legislation will come into force on 1 October 2006. The draft regulations:

- prohibit unjustified age discrimination in employment and vocational training;
- require employers who set their retirement age below the default age of 65 to justify or change it;
- introduce a new duty on employers to consider an employee's request to continue working beyond retirement;
- require employers to inform employees in writing, and at least six months in advance, of their intended retirement date;
- remove the upper age limit for unfair dismissal and redundancy rights, giving older workers the same rights to claim unfair dismissal or receive a redundancy payment as younger workers, unless there is a genuine retirement; and
- include provisions relating to service related benefits and occupational pensions.

The regulations also remove the age limits for statutory sick pay, statutory maternity pay, statutory adoption pay and statutory paternity pay.

This issue's Infocus features an article on [age discrimination](#).

More information: www.dti.gov.uk

[▲ Back to top](#)

Free online legal information

The Commonwealth Legal Information Institute (CommonLII) was launched in September.



CommonLII currently provides access to 464 databases from 50 Commonwealth and common law countries and territories. Legal materials include case law, legislation, treaties, law journals and law reform reports.

It is coordinated and operated by the Australasian Legal Information Institute (AustLII) and supported by the Institute of Advanced Legal Studies (IALS) in London.

More information: www.commonlii.org

[▲ Back to top](#)

Financial benchmarking survey kicks off

The Law Management Section (LMS) is currently undertaking its sixth annual *Financial Benchmarking Survey* for law firm members.



Produced in partnership with Baker Tilly chartered accountants and business advisors, the survey will benchmark the financial performance of LMS member law firms across England and Wales against a series of performance indicators including profit per partner, gearing and staff ratios, working capital and overdraft, and investment in IT, marketing and training.

The survey has been sent to eligible members and results will be published in early 2006.

[▲ Back to top](#)

Launch of E-Business Unit and e-business newsletter

The Law Society has launched an E-Business Unit to spearhead a number of initiatives which will provide essential guidance and support for firms who are under increasing pressure to communicate with clients and government electronically.



The Law Society

A series of nationwide events are taking place during the autumn at the Law Society's regional offices. The Unit is also launching a free, monthly, electronic newsletter. It will keep firms abreast of developments in e-government including courts and tribunals modernisation, criminal justice information technology, the Legal Services Commission's IS/IT strategy, and the latest thinking on authentication and security.

With links to further information, it will also keep readers up-to-date on key consultations and law reform work including initiatives like the National Identity Card, relevant European developments (for example, EU data retention) and the latest technology and security tips and alerts.

To subscribe to the newsletter, simply email e-business@lawsociety.org.uk with the words "subscribe newsletter" in the email subject field.

More information: e-business@lawsociety.org.uk or www.lms.lawsociety.org.uk

[▲ Back to top](#)

Changes to sex discrimination regulations

The Employment Equality (Sex Discrimination) Regulations 2005 came into force on 1 October 2005. The regulations include changes made to the Sex Discrimination Act 1975 and the Equal Pay Act 1970 to comply with European Law. The changes arise from the amended Equal Treatment Directive.



More information: www.womenandequalityunit.gov.uk

[▲ Back to top](#)

New Bill delivers on family friendly promise

Choice, equality and flexibility are at the heart of new measures to help all working families balance busy home and work lives, Trade and Industry Secretary Alan Johnson announced on 19 October.



The Work and Families Bill aims to create a modern framework of employment rights and responsibilities for employers and employees while minimising the impact on business.

Mr Johnson said: "The bill delivers on our commitment to help working parents balance the demands of their job with caring for their children by introducing a modern framework of rights and responsibilities that offers real choice and flexibility.

"To help mothers we will extend paid maternity leave to nine months with the aim of increasing it to a year. Increasingly fathers want to play a more active role in bringing up their children, so we will help fathers take time off when the mother returns to work by introducing a new right to paternity leave. And we will also help those who care for elderly or sick relatives by extending to them the right to request flexible working.

"Our consultation showed broad support for our family friendly approach, but today's bill also includes a number of measure to make it easier for businesses to deal with employees taking time off to give their child the best start in life."

New measures in the bill and forthcoming regulations include:

- extending statutory maternity pay and maternity allowance to nine months from April 2007 with the ambition of moving to a year by the end of the Parliament (including extending eligibility for additional maternity leave);
- power to introduce new paternity leave for fathers, enabling them to benefit from leave and statutory pay if the mother returns to work after six months but before the end of her maternity leave period;
- extending the right to request flexible working to carers from April 2007;
- measures to help businesses manage the administration of statutory maternity pay, statutory paternity pay and statutory adoption pay;
- introducing keeping in touch days so that where employees and employers agree, a woman on maternity leave can go into work for a few days, without losing her right to maternity leave or a week's statutory pay;
- extending the period of notice for return from maternity leave to two months enabling employees and employers to more effectively plan for return to work; and
- making clear in the regulations that employers can make reasonable contact with their employees on maternity leave to help employers plan and ease the mother's return to work.

More information: www.dti.gov.uk/workandfamilies

[▲ Back to top](#)

Training framework moves forward

A more flexible approach to the Legal Practice Course (LPC) and better assessment of would-be solicitors during their training period have emerged as key goals for the Law Society's new training framework.



The Law Society

More than 200 responses were received in the latest consultation from firms, legal education providers, local law societies and solicitors' groups and networks. The Training Framework Review Group is now working on proposals to be considered later this year.

The group is looking to see how three main ideas might be developed:

- Making delivery of the Legal Practice Course more flexible. Students would generally have to complete an LPC but could be given an exemption from parts of it because of their prior qualifications. The group is considering allowing electives to be studied independently of the core modules on the LPC.
- New compulsory and centrally set assessments that would cover financial and business skills and also professional conduct. The group will be exploring the use of computer-based testing – similar to that used for driving theory tests. Probate may also become subject to the same kind of assessment as it is a reserved area of work that is not currently examined.
- More objective and thorough assessment of trainees' performance while in practice, recognising both the profession's concerns about increased demands on supervising solicitors and the significance of the decision taken at the end of the period to allow a trainee to be admitted as a solicitor.

"The Training Framework Review was always intended to be an evolutionary process, building on the strengths and successes of the present system but making it fit for the future. There is a recognition that students with prior qualifications and experience may not need to follow the same course as inexperienced graduates," said Janet Paraskeva, Chief Executive of the Law Society.

"We are keen to look at the possibility of central assessment for areas like financial and business skills and conduct without the need to study a prescribed course. This will give us the chance to see how students perform when they are free to decide how to prepare for assessments. It could also help with future consideration of the need for compulsory courses."

The recommendations will be considered by the Law Society Council in December. The new Regulation Board will take responsibility for changes to training when it takes up its full duties in January.

More information: www.lawsociety.org.uk

[▲ Back to top](#)

European Community to sign money laundering treaty

As member states now set about implementing the third money laundering directive, the European Commission has tabled a draft decision enabling the European Community (EC) to become a signatory to the revised Council of Europe Convention No 198 on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism.



Although the convention dates from 1990, the Council of Europe decided in 1998 that an updated version was required and agreement was finally reached on a new text in May 2005. The convention was revised to take into account the other international instruments in this area, in particular the money laundering recommendations of the Financial Action Task Force. All member states are party to the convention but in a complex arrangement regarding international treaties, the EC also has competence to sign up to the convention.

More information: www.europa.eu.int

Source: *Brussels Agenda*, November 2005

[▲ Back to top](#)

Results of legal services market scoping study

The Department for Constitutional Affairs (DCA) has recently released results of a scoping study on the quality of the legal services industry.



The study investigated whether consumers have sufficient information about the quality of service and value for money they can expect when they hire a lawyer. The study's preliminary analysis of the legal services market has confirmed that consumers and suppliers may be disadvantaged by a lack of information about quality within the marketplace. The market may, therefore, not be functioning competitively.

Survey evidence shows that very few consumers make use of quality marks when selecting a lawyer. The full study will attempt to understand why, and look at the interrelationship between marks and other sources of information on quality in the marketplace.

The scoping study has also identified that signals other than quality marks might aid consumers seeking to judge the level of quality of legal services appropriate to their needs. These include price, professional qualifications, and referral systems.

More information: www.dca.gov.uk or www.lawsociety.org.uk (for details about the Lexcel quality mark)

[▲ Back to top](#)

Participants sought for research into quality marks

Law Management Section members and firms that possess Lexcel and/or Investors in People accreditation are invited to take part in a research project.

The research will focus on quality marks in the legal profession and the relationship, if any, with the effectiveness, efficiency, profitability and improvement of a practice.

Huw John, an LMS member and MBA student at the University of Glamorgan, is looking for participants to complete a questionnaire.

More information: huwj@jhsolicitors.co.uk.

[▲ Back to top](#)

Consultation: advancing equality

The government is seeking views on its proposals to ensure that the public sector can better meet the needs of men and women.



A consultation is currently underway into its proposals to introduce a public sector duty to promote gender equality – commonly referred to as the “gender duty”. These proposals will require public authorities to eliminate discrimination and promote equality of opportunity between men and women.

The detailed proposals, drawn up in consultation with government departments, wider public sector and external stakeholders, centre around three main components obliging public authorities to:

- identify and implement specific gender equality goals;
- develop and publish an equal pay policy statement; and
- assess the impact of new policies and changes to services on men and women – allowing negative effects to be mitigated.

The consultation closes on **12 January**.

More information: www.dti.gov.uk

[▲ Back to top](#)

Guidance: money laundering

Guidance on the case of *Bowman v Fels* has been finalised by the Law Society’s Money Laundering Task Force.



The Law Society

It includes guidance for solicitors conducting contentious and non contentious work and is essential reading for money laundering reporting officers in law firms.

It supersedes various previously issued guidance.

More information: www.lawsociety.org.uk

[▲ Back to top](#)

Guidance: confidentiality and disclosure, entry, retention and competition

The Department of Constitutional Affairs (DCA) has recently released new guidance documents for solicitors on *The Legal Services Consultative Panel Advice to the Secretary Of State on an application by the Law Society to amend the conflict of interest and confidentiality and disclosure rules*.



It has also release guidance titled *The Legal Services Consultative Panel Advice to the Secretary Of State on the legal profession: entry, retention and competition*.

The guidance addresses the barriers to entry and progression in the legal profession that may be faced by those coming from non-traditional backgrounds.

More information: www.dca.gov.uk

[▲ Back to top](#)

FSA survey of law firms

The Financial Services Authority (FSA) is conducting a survey of law firms who carry on incidental financial services as part of the designated professional body regime administered by the Law Society.

The Law Society's [guidance on the FSA survey](#) will assist firms who have been asked to participate in this survey.

More information: www.lawsociety.org.uk or www.fsa.gov.uk

[▲ Back to top](#)



New LMS toolkit on business development

The new *LMS Business Development Toolkit* is now available for members to download via the marketing resources area of the Section's website.

The toolkit was launched at the *LMS Legal Business Development Forum* in London on 2 November. In line with other LMS toolkits, new chapters will be issued periodically and available in downloadable format via the Section's website.

The chapters will cover subjects such as: the promotional mix, branding, client relationship management, competitive tendering, client care, research and analysis, planning and budgeting, buyer behaviour and selling, marketing the smaller practice, and future developments in law firm marketing.

Each chapter's aim will be to provide an initial reference source to help users manage their business efforts and will include summaries of key issues and techniques; check lists; hints and tips; and suggested reading.

It is free for members and £75 + VAT for non-members (which includes future updates).

More information: www.lms.lawsociety.org.uk

[▲ Back to top](#)



LMS Internet Policy toolkit: new chapter

A new chapter on Voice Over Internet Protocol (VOIP) technology has been added to the *LMS Internet Policy Toolkit*.

Available for members to download via the IT resources area of the Section's website, other existing chapters include use of email, use of the internet, monitoring of email and the internet, management of websites, management of data, disaster recovery and business continuity, and management of laptop computers.

The toolkit is aimed not only at partners and fee-earners, but also at IT staff, practice managers and anyone else who oversees the IT function in their firms.

Non-members can purchase the toolkit via the Section's e-shop for £75+VAT, which includes future updates.

More information: www.lms.lawsociety.org.uk

[▲ Back to top](#)



Infocus

Age discrimination – time to take action

In July, the Department of Trade and Industry (DTI) published the draft Employment Equality (Age) Regulations 2006 with a commencement date of 1 October 2006. That might seem a long way off, but employers need as much time as possible to wrestle with the implications of the new law. So what should employers be doing now?

First of all, employers will need to digest more than 50 pages of statutory instrument that will create a new strand of discrimination law and also remove certain age factors from the present unfair dismissal and statutory redundancy pay laws. While the final regulations could differ from the draft, the main framework of the new law is fixed. The good news is that employers will find the new law strikingly familiar because it follows the framework of other EU-inspired discrimination laws. Direct and indirect discrimination on the grounds of age in the fields of employment and vocational training will be unlawful, as will discrimination by way of victimisation or harassment. Job applicants and employees will be protected, together with agency workers, office-holders, barristers and partners. Employment tribunals will have jurisdiction to hear claims and the power to award (uncapped) compensation.

However, there are some interesting differences. Very significantly, it will be possible to justify objectively direct (as well as indirect) discrimination by showing the employer's action was a proportionate means of achieving a legitimate aim. How tribunals are likely to interpret this test in practice is one of the great unknowns. Furthermore, the law will include a host of exceptions unseen in other strands of discrimination. Employers will want to check that some of their long-cherished HR practices remain lawful. If they are not age discrimination compliant, change will be required and that could take time to achieve.

Unsurprisingly, recruiting or promoting on the basis of age, whether by using a minimum or maximum age, will become unlawful unless objectively justified. There is one exception. It will be possible to refuse to recruit an employee "who has attained the age of 65". Employers would be well advised to base decisions about recruitment and promotion on skills rather than age. Importantly, even avoiding age requirements may not be enough because of the breadth of coverage of indirect discrimination. For example, will a graduate only intake policy be lawful? This could be indirect discrimination as it disadvantages younger employees. Another task for employers is to audit their job advertisements or application forms for age or age-related elements. While, for example, the law will not outlaw asking for someone's age at a job interview, the risk is that a rejected job applicant may convince a tribunal that the question demonstrated a selection system unlawfully based on age.

Turning to benefits, the setting of an age criterion for entitlement to invalidity benefits will not be unlawful. Plus, there are major exceptions for age-related pension rules (although some pension rules may still fall foul of the new law). However, withholding other benefits because of age could be unlawful. In addition, indirect discrimination could catch eligibility requirements that have a greater impact on a particular age group. The classic example is a service-related benefit. To retain these, employers will have to seek out objective justifications. The DTI draft offers three potential exceptions. A length-of-service requirement of five years or less, or one that mirrors a similar requirement in a statutory benefit (such as redundancy pay) will be exempt. Similarly, a length-of-service requirement which rewards loyalty, encourages motivation or recognises experience. Nonetheless, these exceptions are quite limited.

The most talked about provision in the new law is that employers will be able to "retire" employees at 65 (although the government will review this in 2011). Retirements will have to comply with age discrimination law and unfair dismissal law (because the current upper age limit will be abolished). Retirements will have to be "planned retirements" and employers will have to comply with the new "duty-to-consider" procedure. The former requires giving the employee six months' notice of retirement. The "duty-to-consider" procedure is modelled on the right to request flexible working. The employer has to notify the employee, between six and 12 months prior to retirement, that the employee can request to work beyond retirement. Following a request, employer and employee are to meet, and the employer is to give its decision within 14 days. The employer's duty is to consider the request "in good faith". The employee can appeal within 14 days and thereafter the employer must give its final decision within another 14 days.

What about employers who have a standard contractual retirement age of below 65? Enforcement of this will be unlawful unless it can be objectively justified. A blanket retirement age of below 65 looks very vulnerable. Employers might find it more productive to put in place procedures to effect fair dismissals irrespective of age. After all, one problem in seeking to defend, say, a retirement age of 60 is that, if unsuccessful, the compensation awards could be significant.

One of the most potent rules of discrimination law is the employer's secondary liability for the acts of its employees. Investing time in educating staff to be "non-ageist" will reap dividends. For example, ageist jokes could be unlawful harassment if they violate the victim's dignity or amount to an intimidating, humiliating or offensive environment. The government's aim is that ageism will become as much a taboo subject as racism is today. Employers now have less than a year to take age discrimination out of the workplace.

By Raymond Jeffers, Global Head of Employment at Linklaters law firm

This is an updated version of an article that first appeared in *The Lawyer* on 19 September 2005.

[▲ Back to top](#)

Risk management: cover your assets

Partner assets at risk are a real concern, as shown by the rate of conversion to Limited Liability Partnership (LLP) status, and an issue for firms of all sizes. How can lawyers protect themselves when they take on matters worth many times the firm's indemnity limit?

New indemnity rules make it an issue even for firms doing low-value work, because similar claims may be added together for insurance purposes under the "aggregation rule". LLP status is not a complete solution. An LLP could sink under a claim, taking members' livelihoods with it, leaving any personal exposures such as bank guarantees and leasehold obligations. Additionally, there is the risk of personal exposure for the lawyer's own mistakes.

For those in a partnership, when high-value instructions come in, there is no opportunity to convert to an LLP in time. Nor are terms limiting liability a complete answer, not least because they may not work in practice. Legal Risk's *Top 100 Professional Indemnity Survey 2005* showed that only 11 per cent of respondents took out more than £150 million cover. The insurance market has capacity for £400 million cover, but few firms in practice wish to incur that expense.

Simply increasing insurance cover is not the solution, for three reasons. Firstly, insurers will not want to insure a single transaction. Secondly, limits required may not be available. Thirdly, if firms do increase cover, the cost will recur for many years and may make the transaction wholly uneconomic. What is needed, therefore, is a strategy, whether in an LLP or a partnership. As with managing any other risk, the starting point is to identify the risks and decide whether to eliminate, mitigate or accept them.

How real is the risk?

Increasing numbers of claims above or around firms' indemnity limits focuses minds. Press reports of multi-million dollar lawsuits against US firms are numerous and there have been reports of a £600 million claim against a UK firm (reportedly settled for £10 million) with another for around £200 million heading for trial.

Figures from St Paul Travelers show claims of more than £1 million against large firms approaching a high. A study by the American Bar Association shows that the number of big ticket suits against firms has risen dramatically since 1996. How large these cases are, however, is not revealed.

In practice, even the largest claims have until now been resolved without payment over the indemnity limit. But nobody wants to be the first and a large claim within the indemnity limit could have a significant effect on the availability and cost of obtaining cover in the future. The recent spate of corporate failures among major global companies increases the risk of lawyers, alongside the accountants, as defendants to massive claims, and insurers have noted an increase in claims from firms' overseas offices, which used to be regarded as low risk.

The size of a transaction cannot be regarded as a sufficient indicator of risk: I have defended an environmental claim more than 100 times the purchase price of the property.

Formulating a strategy

Key components of a strategy will include:

- Reducing the risk of error – most claims arise from administrative failures, not lack of knowledge of the law; other aspects to consider include know-how, training, supervision and use of counsel or others. Firms should identify the high-risk areas of work, the causes of claims for that work-type, and implement systems and quality control. Claims trends are important, with insurers noting an increase, for example, in intellectual property claims.
- Reducing the risk of claims – many arise from poor client communication.
- Sharing liability with clients – a key ingredient is contractual exclusions limiting the scope of duty, as well as the more obvious financial limit on liability.
- Sharing liability with others – counsel or other professionals. However, reliance on counsel is rarely a complete defence in practice; it is extremely rare for counsel to give solicitors a full indemnity on a claim, and counsel's indemnity limits are generally low.
- Avoiding gratuitous assumption of risk to third parties, unpaid advice, or advice to the client beyond the scope of the retainer. Examples include LLP members signing letters in their own name. Lawyers could learn from surveyors and valuers, whose reports exclude liability to parties other than named clients.
- Deciding what to insure – the penultimate resort.
- Keeping assets out of sight – transfer to spouses or into trusts, common in the US, may be possible with careful regard to the position under the Insolvency Act 1986. However, spouse risk should not be forgotten. Spouses may also have professional liabilities, even being partners in the same firm.

Making a start

Client engagement is probably the single most important thing to consider. Acting for the right clients reduces the exposure dramatically. Like all aspects of risk management, it is a culture not an event, and must be kept under review. Even Enron was a perfectly acceptable client once. Geography is a factor, with US exposure an obvious example, particularly in view of limitations that may apply on insurance cover, but other areas should attract at least equal attention, particularly former Soviet states. Not all firms recognise the contribution of money laundering compliance to risk management.

A 2004 PricewaterhouseCoopers survey on financial management in law firms revealed that engagement letters are still not standard practice in more than 10 per cent of the top 100 firms. My experience of defending law firm claims is that they are almost unknown on claim files – suggesting that either their use is rare, or these are the matters on which claims occur.

Limiting liability contractually is on the increase. Solicitors fear losing work by even raising the issue, but those who do so report little difficulty in practice except with some institutional clients. Terms may include time limits as well as monetary limits. Existing terms will need review to take account of the new indemnity rules. Clients are not the only risk: others may include beneficiaries under a badly drafted will, lenders and, occasionally, investors and shareholders. Think, too, of the possibility of others using your precedents.

People risk is a significant issue – who will do the work? The best people may be the most overworked. Over-dependence on one client may also compromise professional integrity, and this is so whether it is the firm's or the individual's over-dependence.

Finally, protecting individual LLP members from liability is a topic in itself. Contractual measures are not the only solution, because of problems such as personal appointments, or overseas offices where incorporation is not permitted. Insurance solutions can also form part of the package to address these issues.

By Frank Maher, a partner at Legal Risk, a firm of solicitors specialising in risk management and professional indemnity for law firms and insurers

[▲ Back to top](#)

Upcoming events

Regional Lexcel seminars – Lexcel and excellent client service

24 November
Newcastle

The Lexcel office, in conjunction with the regional offices of the Law Society, has been holding a series of evening seminars with one remaining in 2005. The course has been specifically designed for partners with managerial responsibilities and practice managers. The keynote speakers are Dr Heather Stewart of Otterburn Legal Consulting and author of *Excellent Client Service*; as well as Giles Watson, Lexcel Manager.



The seminar, which will be followed by a reception, will consider:

- the benefits of client service;
- dealing with clients;
- promises, practices and client care letters;
- client relationship management;
- how Lexcel can help you implement best practice client care;
- client care requirements within Lexcel;
- complaints handling procedure; and
- customer satisfaction surveys and annual reviews.

More information: 0191 2223140 or judith.mason@lawsociety.org.uk.

[▲ Back to top](#)

Profiting from the legal e-business revolution

from 24 November
various locations

Find out how you can prepare for the legal e-business revolution at a series of evening seminars hosted by the Law Society regional offices to mark the launch of the Law Society's E-Business Unit.

The seminar is designed to help delegates prepare for the competitive impact of online technology investment in the wake of the government's White Paper on the future of legal services.

It is the first in a rolling programme of events to support the profession, with more planned for other regions early next year. CPD accredited for 1.5 hours, and costing £40 + VAT, the seminars will be held at the following locations:

Location	Date	Time
Cardiff	Thursday 24 November	5-7pm
Bristol	Monday 28 November	5-7pm
Wolverhampton	Tuesday 29 November	4-6.30pm
Yorkshire	Wednesday 7 December	5-7pm
Newcastle	Thursday 8 December	5-7pm

To stay informed, subscribe to the E-Business Unit's free, monthly newsletter, when completing your booking form or email e-business@lawsociety.org.uk with "subscribe newsletter" in the subject field. The first issue will be out later this autumn.

More information or to book: www.lms.lawsociety.org.uk

[▲ Back to top](#)

Risk management for the legal profession

30 November-2 December
London

Through a combination of best practice case studies, expert presentations and an interactive panel, this event will provide you with the expertise, tools and strategies that you need to ensure the success of risk management in your firm.

The programme will include sessions on conflict of interest and confidentiality rules; complying with new regulatory risks; establishing resilience in your business continuity plans; reducing the risks associated with the client; supervision of fee earners; and the Law Society's perspective on risk management.

More information: 020 8785 5910 or www.ark-group.com

[▲ Back to top](#)

Recent publications

Blackstone's Guide to The Disability Discrimination Legislation

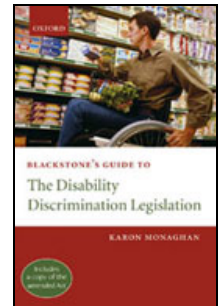
By: Karon Monaghan
Price: £34.95
Pages: 640 pages
Format: paperback
Publisher: Oxford University Press

This practical and easy-to-use guide is a vital companion for anyone working in or seeking to understand this complex area of the law, including solicitors, barristers, service providers, and advisers.

The book describes and explains the changes to the Disability Discrimination Act 1995 and details the UK's obligations under European law, giving a broad perspective on the new legislation and includes a copy of the Act and extracts from the Codes of Practice.

More information: www.oup.co.uk

[▲ Back to top](#)



Strategies and Practice in Law Firm Mergers

By: Alan Hodgart
Price: £75
Pages: 312 pages
Format: paperback
Publisher: Legalease Publishing

Written by a leading consultant in the field who has advised in more than 60 law firm mergers, this title combines real life feedback with expert guidance. Interviews with managing and senior partners from both merged and merging sides of nineteen law firms are worked into a detailed text, providing a unique overview of how to manage a merger.

In recognising the importance law firm mergers can make within the overall strategy of a law firm, the book takes the reader through the life-span of a merger, from pre-merger discussions to post-merger evaluation. It also includes practical guidance through extensive case studies.

More information or to order: www.legalease.co.uk or orders@legalease.co.uk



LMS members receive a 20 per cent discount on a range of practice management titles from Law Society Publishing. For further details, visit to benefits area of the LMS website (www.lms.lawsociety.org.uk) or email millie.patel@lawsociety.org.uk quoting 'SOLS'.

Contact details

Has your email address changed?

In order for us to keep you updated with regular information about LMS, and to send you further *Law management e-alerts*, we need to be regularly updated of email address changes.

If your email address is wrong, has changed, or is going to be altered in the future, please let us know via the contact details below so we can update our database.

We are always interested in hearing your views and ideas on how the Section could most help you and serve your interests. If you have any queries or feedback regarding the Law Management Section, or would like to inform us of a third party management event, please contact us.

Law Management Section

The Law Society
113 Chancery Lane
London WC2A 1PL
DX: 56 London/Chancery Lane

Tel: 020 7316 5707
Fax: 020 7316 5775
Email: lawmanagementsection@lawsociety.org.uk
Web: www.lms.lawsociety.org.uk

Emma Cornick

LMS Administrator
Tel: 020 7316 5707
Email: emma.cornick@lawsociety.org.uk

Marga Aúz

Systems and Information Projects Manager
Tel: 020 7316 5736
Email: marga.auz@lawsociety.org.uk

Rachael Ghata

Events Manager
Tel: 020 7316 5572
Email: rachael.ghata@lawsociety.org.uk

Joanne van Zeeland

Publications and Development Manager
Tel: 020 7316 5697
Email: joanne.vanzeeland@lawsociety.org.uk

Marcy Nicholson

Editorial and Marketing Assistant
Tel: 020 7316 5522
Email: marcy.nicholson@lawsociety.org.uk

The Law management e-alert is intended to be a medium for delivering and sharing news and information. The views and information are those of the individual authors and not necessarily the Law Management Section. No parts of this publication may be reproduced without express written permission from the Law Management Section.

© Law Management Section 2004

[▲ Back to top](#)