

means, maintaining contact with clients even after their matter is closed. An hour a week spent calling a dozen clients for a five minute informal chat can produce large volumes of work — it shows you care and clients who are cared about come back and refer.

Perversely, many firms have management information systems that reward fee earners for doing work, but not for uncovering work for others in

the firm to do. Such systems stop dead most thoughts of trying to uncover more work for the firm. Most mid-tier firms could increase their fees by 20 per cent a year without increasing the number of clients just by asking them about their other problems and needs and referring the uncovered work internally.

Last, make sure that everyone in the firm acquires these skills, from the senior partner to the receptionist. A

firm that relies on partners alone to generate work is capping its own growth prospects. Making the firm successful is everyone's job. ●

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Letter from London CO-ORDINATED BY

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Ensure all staff understand professional indemnity risks

Frank Maher LEGAL RISK

Failing to meet the complex requirements for professional indemnity can be catastrophic for law firms. Successfully managing the process might be the final responsibility of a particular partner, but it is a duty that must involve the co-operation and understanding of the entire firm.

The role of the professional indemnity partner used to be fairly simple: fill in a proposal form, wait for a bill from the Solicitors Indemnity Fund (SIF), pass the direct debit to your accounts department, then pass the odd claim to the SIF and maybe your top up insurer if it looked on the big side.

So what's changed? Quite a lot actually — several changes have conspired to take up far more time, make the role more fraught with danger and generally detract professional indemnity partners from the ability to do fee earning work. Examples of this change include:

- obligations to open market insurers are far more onerous — get it wrong and you may end up without cover, with less cover or a larger excess;
- you have to notify 'circumstances' as well as claims, resulting in far more notifications;
- arranging cover is now a far more complex affair and increasing costs mean you have to be smarter in

choosing what you recommend your partners to buy;

- complex successor practice provisions mean you are, or should be, consulted over practice and staff acquisitions; and
- keeping your firm's management up to date on the claims and insurance process, given the massively increased significance of the issues.

It is far better to be able to say that you have looked at your risk management, found things needing attention and addressed them, than to have turned a blind eye to what is happening in the firm.

Increased obligations to insurers

The [England and Wales] Law Society's minimum terms and conditions, and those applying to some other professions, prevent insurers from declining cover for non-disclosure. That is not the end of it, however, because there are provisions allowing insurers to

seek reimbursement. Although these are targeted only at the person who withheld the information, difficult questions may be asked about your procedure for filling in the proposal form.

At one time, firms might have got away with just asking the partners if there was anything to declare on the proposal, but now nothing short of signed declarations from all staff will do — not just fee earners, but receptionists and mailroom staff too — there was the matter of a £3 million claim arising from a letter in the wrong envelope.

Employees need to clearly understand what it is you are asking for and why it matters. You should be thinking now about disciplinary sanctions for withholding information — it is so serious that it can affect the viability of the whole practice.

Think about workshops for all staff members — it need only take 15 minutes to explain what it is you need from them and why. Educationalists advise that learning is multi-sensory, involving visual, auditory and kinetic means, explained succinctly in an old Chinese proverb as 'I hear, I forget. I see, I remember. I do, I understand'. People's reliance on these different learning methods varies considerably and it follows that an email or memo is not the best way to extract the information you need from all staff to provide the level of comfort you need to comply with the onerous obligations to your insurers.

Seminars take time to prepare — experts generally say about one hour's preparation is required for each minute of delivery, and to get the best out of the event you need an experienced presenter. Think about bringing in an outsider to save time and money; the cost could pay for itself in the first five minutes of the policy year.

Notifying circumstances

Most insurers now require you to notify both claims and circumstances as soon as is reasonably practicable; failure to comply may mean that you have cost them the chance to put a problem right. If that happens, they can claim reimbursement for the additional cost caused by prejudice, which might be the whole cost of the claim if, for example, insurers lost the chance to apply for a time limit to be extended.

The consequence for your firm's professional indemnity partner is that almost anything that goes wrong in the office has to be notified to insurers with all that it entails in terms of correspondence, form filling and getting information out of fee earners (who may not always be that co-operative).

The continuing obligation to notify circumstances means that you cannot simply leave the issue until just before the date of renewal — it needs to be a regular event during the year. You have to balance the need to keep the issue at the forefront of people's minds while avoiding the risk of overload. I suggest that quarterly is a reasonable compromise to keep people alert to the issue and flush out any problems that have occurred in the interim.

Claim and circumstance have technical meaning. Do your partners and staff understand what a circumstance is? I suggest 'mistake' or 'complaint' as a practical working definition.

Ensure you know exactly what you are covered for.

Disciplinary costs are also now covered where there is a related civil liability to help alleviate the old problem that the handling of a complaint could have an adverse effect on the future course of a civil claim.

Arranging cover

Although there may appear to be numerous insurers to choose from, in

reality there will only be two or three likely to be interested in covering your firm, because they all target different market sectors. Your broker will help you select which ones to approach.

But how much cover do you need and can you save on the cost? One way may be to take a larger excess; if insurers are paying claims, you can expect them to charge you more to cover their overheads and profit. There are methods available that can produce computer simulations to help you make a more informed decision on what size excess to take and whether a quotation for a higher excess is worth taking up.

How much cover are you going to arrange? Do all partners and staff understand the need to consult with you if they are taking on an unusually large transaction that might make current levels of cover inadequate? What about limiting liability? Although it is rare in the legal profession, it is worth keeping in mind as a possibility.

Bear in mind that increasing cover to deal with a particular transaction is all very well, but you will need to maintain the increased cover for some years to come, assuming of course that it continues to be available at that level in a hardening market.

What can you tell your insurer about your attitude towards risk? Can you show that you have taken steps to identify problem areas and have dealt with them? A surprising amount of information can be found out cost effectively with questionnaires. The traditional brokers' type of questionnaire may not reveal much, but more sophisticated types are available, designed with input from business psychologists. One firm with a long history of missed time limit claims that tried this technique discovered that half its staff did not know it had a backup diary procedure for key dates, and the rest did not understand it. Another firm found that many of its staff did not know the money laundering notification requirements, an imprisonable offence [in the UK], as one solicitor found to his cost.

Some consultants do risk audits simply by questioning one partner, but that can reveal little about the true risk of the practice. Most people think that they work in the firm's standard way, but our experience of doing risk management

audits for firms shows that this is anything but the case.

A more extensive check does not have to be expensive and should not be regarded as an overhead; rather, it is an opportunity to save money and prevent easily avoidable mistakes. Most firms would only have to avoid one claim every few years to make an annual risk audit pay for itself on that basis.

Successor practices

Some firms have had seriously expensive surprises arising from unintended consequences of recruitment and poaching from other firms.

If you are taking a team from a firm that is splitting up, do not assume that you will be able to address the position by the old firm simply taking out run-off cover; there are many reasons why you might not wish to even if you could.

In one case, a retiring sole practitioner joined a large practice as a part time consultant. The new firm proudly announced it had taken over his practice. As a term of the deal he indemnified them against any claim from his old practice only to discover that claims were subject to the large firm's substantial excess, which he could ill afford. If he failed to pay, the firm would be liable. A little planning might have avoided this, for example, by asking insurers to accept a small excess on claims arising from the consultant's former practice.

So tread with care and make sure you are involved in these sorts of decisions, that you either understand the rules or take advice from someone who does, and consult with your brokers and insurers before the deal is signed.

Management reporting

How you keep track of coverage issues and the current status of claims can be a big task in itself. Most tender documents require details of your claims history — the problem is that they all ask slightly different questions — some only ask about litigated claims over different lengths of time by work type or by fee earner; this means that every query takes time to respond to. The professional indemnity partner is often the last person to be consulted about tenders, perhaps only on the day it is due to go in. Have you set up a

dedicated database to help you manage the status of claims and deal with these queries?

Tenders, particularly for public sector work, can also raise other issues, as they may require the firm to take out additional policies or cover.

It is also worth thinking about how a proactive review of claims can save you money. If claims are kept open, they will be taken into account on your next renewal. Can anything be done to close them off? Does the client just want the fees repaying? (AQ) Can your insurers be persuaded to close the file if it is clear it is not going to be pursued or perhaps is now time barred?

Points to ponder

- How many hours a week/month do you spend dealing with the firm's claims?
- Can you be confident that all notifiable claims and circumstances are being promptly notified to you and to your insurers?
- Do you have any formal procedures in place for ensuring all claims and potential claims are dealt with centrally?
- Do you know the level of your insurance cover? Do you know the amount of your excess and any aggregate limit?
- Do you know the monetary value of all of the matters being dealt with in your firm?
- Do you know the requirements for notification for each layer of your firm's cover?
- Have you had a risk management check?
- Do you know the up to date position on all your firm's claims
- Are you learning the most from your claims experience to prevent recurrence?
- How many hours do you spend answering questions on tender documents?

The message is: make sure someone responsible takes control of your professional indemnity risk, don't just leave it to chance. ●



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