

In this issue:

- [Alternative Business Structures](#)
- [Outcomes-focused regulation](#)
- [Mortgage fraud](#)
- [Money laundering and Bribery Act compliance](#)
- [Professional indemnity insurance](#)
- [Scope of retainer](#)
- [Events](#)

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Alternative Business Structures (ABSs)

While press interest has focused on the so-called 'Tesco law' aspects of ABSs, the groundswell of interest may be elsewhere, with firms striving to find a way round the proposed ban on referral fees for personal injury work (in the Legal Aid, Sentencing and Punishment of Offenders Bill). It may not be a straightforward solution in all cases, and it is curious that there is a perception that payment of referral fees is not in the public interest, but that it is in the public interest to have ABSs which may achieve the same end result by permitting the sharing of fees with referrers.

We are advising a number of firms on the application process.

Contact: info@legalrisk.co.uk

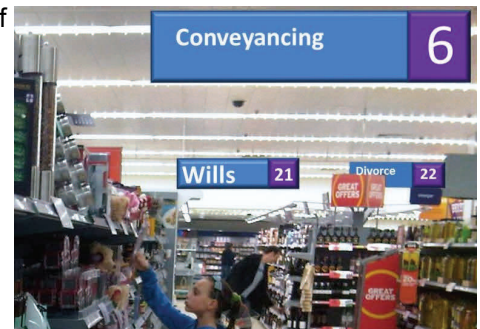
Outcomes-focused regulation

With the increased emphasis in the SRA Code of Conduct on financial management as a compliance issue, it is interesting to note that one solicitor is being prosecuted in the Solicitors Disciplinary Tribunal for, among other things, failing 'to provide for financial control of budgets, expenditure and cashflow'.

Solicitors' practices in England and Wales will have to nominate their Compliance Officer for Legal Practice (COLP) and Compliance Officer for Finance and Administration (COFA) by 31 March 2012. We have heard of accounts personnel reporting (rightly or wrongly) that they are being discouraged by their professional bodies from accepting appointment as COFA, though we have seen no public pronouncement on the subject.

We have advised a number of firms on their choice for the appointments. We also provide helpline support for a wide variety of firms on compliance issues; these include major international firms, regional firms, volume practices and high street solicitors. We have assisted a variety of firms with file audit and other aspects of on-going monitoring of compliance.

For advice on these and other compliance issues contact info@legalrisk.co.uk



Online training

We can provide a tailored online training package on a whole range of matters, such as conflicts, anti-money laundering and outcomes-focused regulation

For details contact info@legalrisk.co.uk

Mortgage fraud

The British Bankers' Association's publication *Mortgage fraud: Good practice guidance note* is aimed at lenders' practices. This contains guidance on managing relationships with solicitors, and may result in more active panel vetting; we understand some firms have been experiencing this already.

We have assisted many firms in dealing with the fallout from mortgage fraud, including insurance coverage disputes, notification to insurers, reporting and other compliance issues under the SRA Code of Conduct, anti-money laundering and partnership issues. We also have extensive experience of advising firms on other 'rogue partner' (and employee) problems.

For advice on dealing with mortgage and other fraud-related issues, contact info@legalrisk.co.uk

Money laundering and Bribery Act compliance

Carbon trading is offering new opportunities to money launderers according to a report in The Times on 14 January 2012, which described a gangland killing in Paris. It was also the subject of a claim for knowing receipt in **Armstrong DLW GmbH v Winnington Networks Ltd.** [2012] EWHC 10 (Ch)

Money launderers are as aware as solicitors that property is perceived to be the practice area most exposed to money laundering risk, and may therefore focus their efforts on other practice areas. We have commented previously on the increase in attempts at money laundering through litigation.

While litigation practitioners may have had an easier time with compliance following **Bowman v Fels** [2005] EWCA Civ 226, they should be alert to a significant risk that property recovered may nonetheless be criminal property. The Law Society has issued a note in relation to matrimonial proceedings, but the implications extend to litigation generally. <http://www.lawsociety.org.uk/newsandevents/news/view=newsarticle.law?NEWSID=444868> We are increasingly instructed to advise on compliance with production orders.

Anti-bribery compliance should extend to those who could be construed as being 'persons associated' and in a position to 'provide services'. This may encompass a variety of scenarios, such as overseas joint ventures and, closer to home, claims management companies.

For advice on these and on anti-money laundering and anti-bribery compliance, policies and procedures contact sue.mawdsley@legalrisk.co.uk.

Scope of retainer

In **Farnon v Devonshires Solicitors** [2011] EWHC 3167 (QB) the court held that the solicitors' retainer for advice relating to the claimant's notice period and restrictive covenants contained in a partnership agreement was limited and did not extend to sex discrimination issues.

Often, though not invariably, solicitors can help avoid disputes on the extent of retainers through their engagement letters and terms. We have advised many firms on their engagement letters and terms.

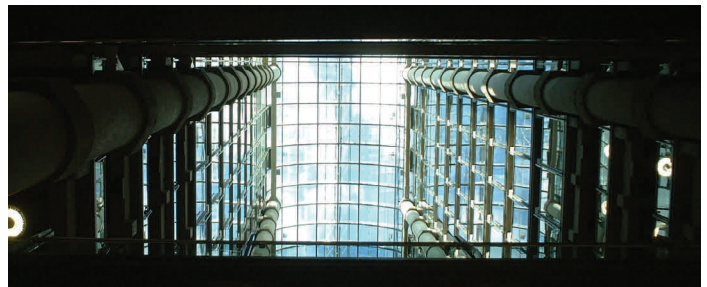
For advice on engagement letters and terms contact info@legalrisk.co.uk.

Professional indemnity insurance

The Solicitors Regulation Authority and the Law Society have been granted leave to intervene in a dispute on the application of the 'aggregation clause' in the Minimum Terms and Conditions ("MT&C") in the case of **Godiva Mortgage Limited v Travelers Insurance Company Limited**. The issue is whether insurers are entitled to treat multiple claims as one for the purpose of computing the limit of indemnity. The current provision was introduced following pressure from the insurance industry after the decision in **Lloyds TSB v Lloyds Bank** [2003] UKHL 48. We advise numerous firms and insurers on these and other coverage issues.

The Solicitors Regulation Authority's consultation on financial protection has closed. A major concern in our view is that so long as the MT&C continue to offer such wide cover, with little opportunity for insurers to escape indemnifying even those who commit fraud in the proposal form, many smaller firms will only be able to obtain cover from insurers who offer less security. We do not believe the SRA should be charged with monitoring the security of insurers, quite the contrary, but it is in the best interests of neither the public nor the profession to put firms in the position where realistically their only option to obtain cover is an untried, untested insurer of uncertain means.

For advice on professional indemnity coverage contact info@legalrisk.co.uk



Events

Sue Mawdsley will be speaking on 'Dealing with production and court orders and warrants' at "Anti-Money Laundering Compliance for Law Firms 2012" in London on 22 February 2012.

She will also be taking part in a panel discussion: Dealing with complex scenarios and your money laundering issues. Further details, including the conference programme, can be found on the Events page of our website: www.legalrisk.co.uk

Bookings should be made with the organisers, Ark Group.

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