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Legal advice privilege: the Pru decision

Note: A longer version of this article is available to users of our Compliance Diary subscription service.

Acres of legal, accountancy and other press space have been devoted to the decision in **R (on the application of Prudential plc and another) v Special Commissioner of Income Tax and another** [2013] UKSC 1. In a nutshell, the Supreme Court held that clients could only claim legal advice privilege when the legal advice was provided by a lawyer and not, as in this case, by an accountant.



Picture - Prudential Assurance Building, Liverpool, designed by Liverpool architect Alfred Waterhouse, also noted for their Holborn, London office and the Natural History Museum, and whose brothers were founding partners of accountants PricewaterhouseCoopers and solicitors Field Fisher Waterhouse.

There is a compliance issue which specifically applies to ABSs, concerning section 190 of the Legal Services Act 2007 which extends privilege to regulated services delivered in ABSs. Section 190 only applies, in essence, where the advice is provided by a lawyer or, critically, a person under the supervision of a lawyer. Who delivers advice, and the nature and extent of supervision, will therefore be critical.

We are frequently consulted on privilege issues, often in relation to anti-money laundering reporting obligations and production orders.

For advice on privilege issues and supervision requirements contact info@legalrisk.co.uk.

For advice on anti-money laundering issues contact sue.mawdsley@legalrisk.co.uk

Support for COLPs and COFAs: Outside the Cube

Legal Risk LLP has launched a monthly compliance service for Compliance Officers for Legal Practice (COLPs) and Compliance Officers for Finance and Administration (COFAs). This is not a newsletter. Instead, it is a Compliance Diary which will provide advice and guidance on a compliance programme assisting COLPs and COFAs to demonstrate that they are monitoring and managing compliance with the key SRA requirements.

Outside the Cube: Compliance Diary is aimed at the COLP/COFA who wants to know "Am I on track?" as well as the cognoscenti interested in the finer points. We also have other support products for those who have yet to implement their systems fully, or who want a review of those they have put in place. See [here](#) for further information.

For further information on COLP and COFA support contact info@legalrisk.co.uk

Professional indemnity: block notification

Decisions on policy coverage issues do not often get reported, because they are usually dealt with by arbitration. **McManus and others v European Risk Insurance Co HF** [2013] EWHC 18 (Ch) is a decision helpful to solicitors on block notifications, or laundry listing. Following a takeover, the firm in question inherited a caseload where every file, they suspected, could give rise to a claim. They notified the entire caseload, even though they could not identify specific exposures on individual files. The Court accepted that the notification was valid.

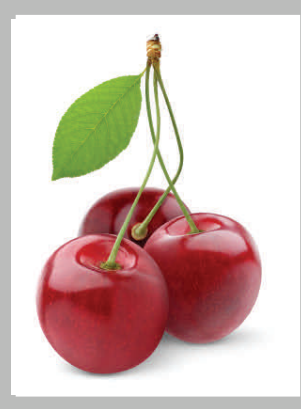
We frequently advise on block notifications, and on what steps to take in response to discovery of a rogue employee. For advice, contact francis.dingwall@legalrisk.co.uk

Changes to client care letters

Changes in the Legal Ombudsman's rules from 1 February 2013 mean that most firms will need to amend their client care letters. *We are providing a revised wording to subscribers to our Compliance Diary – see page 1.* In broad terms:

- time limits for accepting a complaint will increase to six years from the date of act/ omission, or three years from deemed date of knowledge, but with a backstop date.
- an increase in financial limits from £30,000 to £50,000.
- complaints can be made by certain prospective customers.

For advice on client care letters, complaints procedures and dealing with complaints to the Legal Ombudsman contact Francis.dingwall@legalrisk.co.uk



“most firms will need to amend their client care letters”

Articles & Events

For recent articles see [here](#).

For upcoming events see [here](#).

Temple Inn, London



Two bites at the cherry?

It is a perennial issue whether a client with a claim for compensation that exceeds the Ombudsman's limit can pursue a complaint for an award up to that limit, and then sue for the balance (armed with the Ombudsman's findings). In *Clark v In Focus Asset Management & Tax Solutions* [2012] EWHC 3669 (QB), in the context of the Financial Services Ombudsman Scheme, the judge said 'yes'. The point does not arise with the Legal Ombudsman Scheme: rule 5.50 provides that once a determination becomes binding and final, neither party may start or continue legal proceedings in respect of the subject matter of the complaint.

Professional Liability

Two decisions have contributed to certainty in this area:

- *Webb Resolutions Ltd v E.Surv Ltd* [2012] EWHC 3653 provides a useful summary of the correct approach to negligent valuations by surveyors. It also contains a useful indication of the deduction to be made for Contributory Negligence by the lender: 50% in the circumstances.
- In *Davisons v Nationwide Building Society* [2012] EWCA Civ 1626, the Court of Appeal has clarified the question whether a solicitor commits a breach of trust when releasing money to the wrong party, and whether he or she will be relieved from liability under section 61 of the Trustee Act 1925.

We represent both insurers and their insureds in the defence of professional negligence claims. Contact frank.maher@legalrisk.co.uk

Instructing a barrister: standard contractual terms

The Bar has introduced new standard contractual terms for receiving instructions from solicitors. Solicitors would be well advised not to agree them without variation, particularly as they seem to attempt to exclude all liability to instructing solicitors. The Law Society has issued a Practice Note identifying several concerns and draft alternative provisions which solicitors can propose – see [here](#). This raises a number of concerns and we recommend reading it.

The apparent exclusion of liability is of particular concern and raises the interesting question of whether it complies with the rules of professional conduct for the Bar. The drafting creates a blunt instrument lacking the sophistication of terms used by most large solicitors' firms.

We have advised a high proportion of the largest law firms on their terms limiting liability, drafting and advising on implementation of terms including, for example, use with high net worth clients and in the pensions sector.

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For advice on limitation of liability contact frank.maher@legalrisk.co.uk