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Law firm General Counsel

More firms are appointing General Counsel. Some, but not all, are also the Compliance Officer for Legal Practice (or in at least one case Compliance Officer for Finance and Administration). An article entitled *Law Firm General Counsel: The Paradox of Institutional Success?* by Elizabeth Chambliss in 2008 charted the history of the role in US firms, identifying its emergence as a full time position around 2004, though we know some of the larger firms predated this. We are seeing the trend develop into mid-sized firms. It is still the case that the majority of appointments are 'home grown' but there have been examples of external recruitment, including at least two from accountancy firms, and this will doubtless increase.



We provide legal advice to General Counsel in leading UK and US law firms, through our General Counsel Support packages. Maintaining privilege is an essential consideration in these circumstances and we advise both in relation to specific projects and on a 'pay as you go' helpline basis.

For advice to General Counsel and information on our General Counsel Support packages contact info@legalrisk.co.uk

File audit

In one recent case in the Solicitors Disciplinary Tribunal, it was observed that there was no evidence the partner had carried out file audits on any of the matters; if he had done so, he had taken no action to rectify the issues which would have been apparent. He was suspended for two years for this and other matters.

We sometimes hear the view expressed that complex files cannot be audited effectively because those conducting the audit are not in a position to gauge the quality of the advice. Whilst in some instances this may be true, many other valuable indicators can be picked up from an effective audit. Examples of issues we have uncovered on file audit are change of client identity part way through (with no due diligence on the substitute client), inappropriate emails, and, on professional indemnity files, increasing costs estimates each time the previously recommended figure had been used up.

We have undertaken file audit for a cross-section of firms, including City firms, US firms, volume practices and others on a variety of practice types, including corporate, cross-border transactions, employment, professional indemnity, real estate and personal injury as well as helping firms to make their own internal systems more effective.

We covered the practicalities of file audit in the January edition of our subscription service, Compliance Diary, our monthly compliance service for COLPs and COFAs. This provides monthly 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.

For file audit, or advice on systems, and subscriptions to Compliance Diary contact info@legalrisk.co.uk

Limiting liability and Client Care

The Law Society updated its Practice Note on Client Care letters on 26 March 2013. It contains some sample wording for limiting liability carried over from previous editions but we do not consider it sufficient for present day purposes. It also seeks to exclude liability for consequential losses, which we think is fraught with difficulty, given that in many cases, such as the purchase of property for letting, for example, such losses will be within the contemplation of both the solicitor and client, and indeed the potential profit will be the whole purpose for which the client undertakes the transaction.

For advice on terms limiting liability, client care documents and terms of business contact Francis.dingwall@legalrisk.co.uk

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Anti-Bribery

Transparency International is developing an Anti-Bribery and Corruption risk assessment (to be issued end of May 2013).

Our impression is that the Bribery Act 2010 has fallen off the radar of law firms, perhaps because they have been completely consumed by the SRA's regulatory changes. However it is only a matter of time before a firm has an issue, perhaps over IT or outsourcing procurement.

For advice on anti-bribery procedures contact sue.mawdsley@legalrisk.co.uk



"The breadth of compulsory cover has made many an unattractive risk for established insurers and thrust many into the arms of the unrated market..."

Articles

[Prudential and Privilege Pressure Gauge](#)
[Avoiding the Balva trap](#)
[In the Soup: a day in the life of a COLP](#)



RISK UPDATE

Professional Indemnity Insurance renewal

Insurers of US firms have encountered a sustained run of large claims with some very significant loss ratios, though the number of circumstances notified is down. Experience in the UK in the past couple of years has generally been significantly better. The primary limitation period for lender claims arising from the economic woes of 2008 is gradually approaching, and whether or not this flushes out a large number of claims will have a significant impact on the future.

We expect no significant difficulty for the majority of large firms renewing cover for 1 October 2013 but the position may not be so rosy for small firms. The breadth of compulsory cover has made many an unattractive risk for established insurers and thrust many into the arms of the unrated market. While being unrated does not necessarily indicate that an insurer is unable to meet claims, given the long term nature of solicitors' professional indemnity, more so than other professions, it puts premium-paying buyers on enquiry. Although the Law Society has cautioned solicitors against buying from unrated insurers, the reality is that many have no choice, other than to close down.

The position is exacerbated by the situation involving Balva which arose after our last Risk Update. Balva insure 1300 firms. Their Latvian regulator has barred them from writing further business in the UK. There is no suggestion that they are insolvent, but we have yet to see any evidence that provides reassurance for the long term. The economic situation will force many firms out of business and they will be reliant on six years' run-off cover; circumstances may be notified during that period giving rise to claims years later. In our experience it may take 15 years or longer to close a book of solicitors' professional indemnity insurance. We are aware of another insurer which may face problems too. The Law Society has published advice on Financial Security of your PII insurer; however the advice to consider this issue does not solve the problem identified above, that many smaller firms have no real choice. For comment on Balva— and some practical suggestions on steps which might be taken - see an article by Frank Maher in New Law Journal, [here](#).

This begs the question of where small firms will buy their cover this time. We are aware of one new entrant and an unrated insurer which may enter the market, but this appears unlikely to fill the gap which may therefore be filled by insurers whose balance sheet makes them smaller than a top 200 law firm. The closure of the Assigned Risks Pool ("ARP") which has until now provided cover for firms unable to obtain cover in the open market may provide some comfort to possible entrants, but we doubt it will be sufficient to change the landscape dramatically: the history of insuring lawyers is not encouraging.

A further problem could be that many firms borrow to fund their premium, often from secondary lenders who have had their fingers burned in the recent spate of law firm failures. Attitudes to the risk of lending to solicitors may therefore change significantly.

The Solicitors Regulation Authority has floated the proposal of adding the cost of interventions to professional indemnity insurance. The consultation paper asks 'Can compulsory professional indemnity insurance be expanded to cover some or all of the claims paid from the current Compensation Fund?' Having responded to insurers' demands to close the ARP, we are surprised this suggestion has seen the light of day. The average cost of 'traditional' small-scale interventions (excluding the large high profile cases) is stated to be £74,649. Given that small firms which fail are unlikely to pay the run-off premium for the compulsory six years' run-off cover, which insurers nonetheless have to provide, the burden of insuring large tranches of small firms would surely become an unacceptable risk.

The message is to start the renewal exercise early. We advise many firms and insurers, large and small, on professional indemnity issues, including claims, coverage, block notifications, risk management reports, and insurer insolvency issues. We have recently undertaken a comprehensive review of a Law Society's compulsory professional indemnity scheme in another jurisdiction.

For legal advice on insurance claims, coverage and renewal contact info@legalrisk.co.uk

Alternative Business Structures ("ABSs")

We are advising a number of aspiring ABSs on applications for licences, including some large and prominent applicants.

For advice on ABSs contact frank.maher@legalrisk.co.uk