LEGAL RISK LLP
SOLICITORS

Risk Update

NO. 57 JULY 2014

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Professional indemnity – Reduction in compulsory cover and Renewal

Most firms in England & Wales will renew their compulsory insurance on 1 October 2014. There has been some interruption to the process for many firms due to the Solicitors Regulation Authority's consultation on reducing the scope of cover. This concluded that cover should be reduced to £500,000 from its present level of £3 million for incorporated practices and £2 million for sole practitioners and partnerships. (There is a separate minimum of €1,120,000 for insurance mediation.)

We believe this would be a mistake without further evidence and consideration of the consequences. We have several concerns, of which the main ones are these. First, the cost of buying back the 'lost' cover may be far more than any saving, if indeed there is any saving. Secondly, after a firm has closed, it may only have the minimum level of cover: top up run-off cover will not be available for a single premium for six years, unlike the compulsory run-off, and that may be insufficient for work already done before the reduction. Thirdly, solicitors' staff, who have no say in the level of cover, may find themselves exposed to personal liability; they may have been more cautious about taking on work had they known this at the time.

We have made representations to the Legal Services Board, who have to approve any rule change. Our representations are here. We encourage any firms who share our concerns to inform the LSB (details in our representations) urgently.

In the past six years, approximately 4,500 policies have been sold to solicitors by insurers which have become insolvent. Clearly some review is necessary, but taking a piecemeal approach is not the answer.

For many and perhaps most firms, we believe the market will be relatively benign. However, we are already seeing a significant number of firms with problem claims histories. We are advising firms in this position on block notifications and preparing professional risk reports to assist them in the process. The block notifications relate to a wider variety of practice areas than we have seen in the past, some of which are specialist. Block notifications can help by giving a new insurer comfort that the problems have been 'parked' with a previous insurer, but care is needed as if they are either too wide or too narrow, they will not achieve their objective.

Terms of business

We have advised 14 top 100 firms on their terms and many smaller firms and provided expert evidence on limiting liability. There are several reasons for reviewing them from time to time.

First, if the compulsory level of professional indemnity is reduced, provision on limiting liability should be reviewed. However, it will not simply be a case of substituting the new figure in place of the old one.

Secondly, all firms, even those without private clients, need to consider whether they are affected by the Consumer Contracts Regulations 2013 as breaches may attract criminal sanctions. Firms without private clients are at risk because they may be asked to provide some incidental advice to, for example, directors of their corporate clients. They need to ask how they will ensure this does not happen without the appropriate notices and contract provisions being in place.

Thirdly, recent issues affecting Banco Espirito Santo in Portugal demonstrate that even in the EU, the risks in the banking sector have not wholly evaporated. Firms should consider their terms and the basis on which they handle client money.

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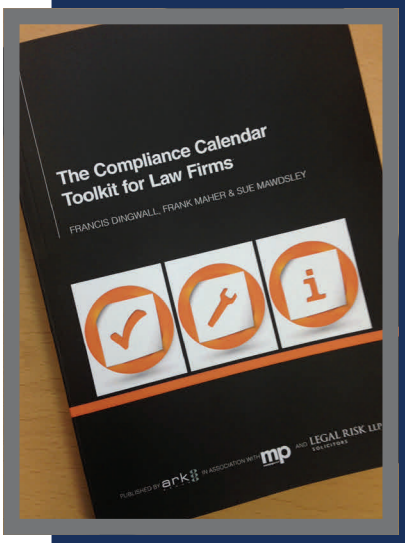

Tax Schemes

HM Revenue and Customs action against individuals who have entered the Liberty and other tax schemes has attracted a large amount of press coverage. It raises several questions for law firms, and we have advised a number. On a general note, have firms historically advised clients that the schemes they are entering may expose them to the risk of costly litigation with HMRC? Some of the investors have very high profiles, which can bring risks in themselves. They may include people who do not take an interest in the detail of advice, and the reputational impact can be high if things go wrong. Firms may need to consider block notifying insurers.

Publication: The Compliance Calendar Toolkit

This is a practical guide to compliance, designed to help firms, their Compliance Officer for Legal Practice and Compliance Officer for Finance and Administration to establish routine systems operating on a monthly basis; if implemented fully, the firm will have covered most of what it needs to be able to demonstrate compliance.

You can order The Compliance Calendar Toolkit here for £60.00 (p+p not included). Includes templates on CD-ROM.

SRA Risk Outlook and City firm risk

The SRA published its latest Risk Outlook on 2 July 2014. This identifies the key risks to the regulatory objectives. Those identified include aspects of anti-money laundering, information security and cybercrime. Interestingly, it identifies lack of independence, commenting –

> This risk is widespread, but is most relevant to firms engaged in corporate or city-based legal work. It may also be significant when a firm is reliant on a single or limited number of clients. Maintaining independence is also relevant to inhouse solicitors, who may come under pressure from their employers.

File disclosure costs: Lender claims

Lenders frequently ask for solicitors' files and some obtain borrowers' consent at the time of the advance to subsequent disclosure of privileged documents. Going through the file to consider the request can be time-consuming. A Judge in Northern Ireland has held that the solicitor can charge at normal rates for this, and 'his secretary's time in photocopying any materials that are sent and for the postage or delivery costs': **Mortgage Business Plc and Bank of Scotland Plc (t/a Birmingham Midshires) v Thomas Taggart and Sons** [2014] NICh 14.

Perhaps this will serve as a disincentive to making large numbers of speculative file requests.

Conflicts: related matters

There is little reported authority on what constitutes the 'same or related' matters for conflict purposes but we do encounter the occasional US case on the point; note however that US rules on former client conflicts are more onerous than ours. In **State of Minnesota v. 3M Co.**, 2014 Minn. LEXIS 202 (Minn. April 30, 2014), 3M successfully applied to disqualify its former lawyers Covington, from acting for the State against them on matters dealing with perfluorochemicals ("PFCs"), as Covington had acted for them on PFC-related matters until about ten years ago.

Anti-Money Laundering

The Financial Conduct Authority has produced a High risk country list. It is a long list – 95 of the 196 countries in the world are on it. Those doing business in the listed countries, or for entities and individuals from them, should review how they undertake and evidence their client and matter inception processes, their methodology for assessing risk, and ongoing monitoring where appropriate.

The UK Financial Intelligence Unit has reported that a third of requests for consent to act submitted by solicitors filing Suspicious Activity Reports are defective. The SRA has provided guidance.

We advise many leading firms on their compliance and at the sharp edge with reporting and compliance with production orders and privilege issues.

For further information on any of the above, please contact info@legalrisk.co.uk

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