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## Solicitors' PII renewal: current risk issues

Law firms are no longer tied to a 1<sup>st</sup> October renewal date, but many will be entering the renewal season. There is much focus on cyber crime, but what other emerging risks will insurers be looking at?

They may be interested in the risks posed to solicitors from continuing low interest rates. In the UK, the Prudential Regulation Authority has warned lenders who offer high loan to value mortgages. A recent IMF report on global financial stability observes that low interest rates cause investors to take more financial risk. This in turn exposes the lawyers who advise lenders and investors to risk.

Unauthorised collective investment schemes also abound when interest rates are low. There have been many such schemes around, involving hotel and student lets, ostrich farms and wine. Many promoters try and persuade investors that their schemes are lawful. On this topic, the Court of Appeal has dismissed an appeal in *The Financial Conduct Authority v Capital Alternatives Ltd & Ors* [2015] EWCA Civ 284. We have advised law firms on the lawfulness or otherwise of schemes in which they are acting.

Standard letters and procedures can be useful risk tools, but not if misused, is the message from the Court of Appeal in *Andrew Procter v Raleys Solicitors* [2015] EWCA Civ 400. This was an undervalue settlement of a coal miner's vibration whitefinger claim. The solicitors took instructions by means of standard letters and tick-box reply forms, and the Court said they took insufficient steps to ensure that the clients, who were unsophisticated, understood the advice being given. The use of standard letters and procedures may give rise to an aggregate limit of cover applying.

In the renewal process, we provide specialist advice to support firms and their insurance brokers on:

- Compiling a risk report for the law firm that is looking uninsurable
- Block notification
- Successor practice issues: mergers, acquisitions and closures
- Terms of the policy
- Aggregation

## The SRA's approach, and approaching SRA investigations

Our perception of the current SRA approach is that they now recognise one size does not fit all. They are undertaking a fundamental simplification of the SRA Handbook. They are focussing on professional standards (integrity, independence, quality of service and work, confidentiality, upholding the rule of law), as the golden threads which must remain constant, however much change there is elsewhere. They seem to anticipate that the profession may find some of the changes they have in mind uncomfortable. Three new Codes of Conduct within 10 years signifies a profession in upheaval.

In the meantime, the SRA can be slow. In the recently reported Solicitors Disciplinary Tribunal case of *Harvie* 11257-2014, the SRA investigation started in October 2011 and the Tribunal hearing was in February 2015. It was observed that four caseworkers were involved in the investigation. It ended in a record £305,000 fine. But investigations do not always end badly. We have had a win for three partners who have been under investigation by the SRA since 2012. A key lesson arising out of that matter is that solicitors should seek advice before meetings with the SRA, and should be aware that they may turn hostile: one of the partners was interviewed, assumed that the SRA was only gunning for a fraudulent employee, and understated the firm's systems for supervision, thereby bringing allegations down on himself and his fellow partners for failing to supervise.

## Phishing for trouble?

Social engineering and the risks it poses to firms is surely high on everyone's agenda. There have been numerous examples of law firms being duped into paying money to fraudsters. We have developed a short online course for your accounts team to highlight and avoid this issue.

October 2015						
Mo	Tu	We	Th	Fr	Sa	Su
28	29	30	1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	1
2	3	4	5	6	7	8

## AML: gathering pace

The European Parliament approved the Fourth Money Laundering Directive on 20 May 2015. We now await any subsequent changes to UK legislation.

In anticipation of the Directive, Part 7 of The Small Business, Enterprise and Employment Act 2015 contains several transparency provisions which will introduce changes to company law, banning bearer shares, prohibiting corporate directors, and requiring unquoted companies to keep a public register of persons with significant control.

In the meantime, the law continues to develop. On client due diligence, the Privy Council decision in *Crédit Agricole v Papadimitriou* [2015] UKPC 13 is a reminder of the need to consider the commercial rationale underpinning clients' instructions. The bank was held liable for failing to give adequate consideration to the commercial purpose of a fraudulent transaction where over \$10 million passed through a Panamanian company, a Liechtenstein foundation and a British Virgin Island company. In *R v GH* [2015] UKSC 24 the Supreme Court distinguished *R v Geary* [2011] 1 WLR 1634, CA. Although committing a fraud is not itself money laundering, there may be a money laundering offence when the proceeds of the fraud are paid into a bank account.



## Cutting red tape, or throwing out the family silver?

With another SRA consultation on professional indemnity insurance expected, we are concerned that the SRA may seek to erode the strength of the solicitors' profession's position. If the changes were to reduce the minimum level of cover, or, as we believe is under consideration, to reduce the minimum period of run-off cover from 6 years to 3 years, it may be throwing out the family silver (not even selling it!) rather than cutting red tape. Unlike other branches of the legal profession, solicitors represent a £250 million market for primary insurance, and great care should be taken before throwing away the benefit of that buying power.

## Order a Data Protection wake-up call

The Law Society's Gazette reported last month that the Information Commissioner has probed 173 law firms over data protection breaches. We are aware of at least one case in the last month where a partner's bag was lost containing laptop, mobile phone and paper files. It is a topic which the SRA expects solicitors to address: see IB(7.3). And it crosses over into other key areas for solicitors:

- 1) Loss of privilege: the High Court's recent decision in *Birdseye and anor v. Roythorne & Co* confirms that once the substance of privileged material is divulged to one's opponent, even by accident and even where there was no implication of an intention to waive, privilege will be prima facie lost.
- 2) Breach of the duty of confidentiality.
- 3) Cyber security: an article by Francis Dingwall, "[A tangled web](#)", appears on our website (Publications page).

We offer training on Data Protection. It is a topic which is often perceived as dry and dull, but we help obtain buy in from staff to support firms' objectives by demonstrating how compliance is relevant to their personal lives. We provide face to face training which we believe is more likely to encourage adoption by staff of adequate precautions, but we also offer an online training course.

## Death Futures

On 26 May 2015 the FCA announced a record £75 million fine on an individual, the chief executive of Keydata, relating to the sale of 'death bonds', investments in portfolios of life settlement policies. We have advised on the successful defence of an SRA investigation into a law firm relating to these products.

We first warned of the risks of these in our April 2004 Risk Update newsletter (under the heading Death Futures), long before the FCA's predecessor, the FSA, took action. You read it here first.

For further information on any of the above, please contact [info@legalrisk.co.uk](mailto:info@legalrisk.co.uk)

## Recent articles

### [A tangled web](#)

Francis Dingwall looks at how to prevent cyber attacks, and how to mitigate them when they do happen.

### [Bulletproof Compliance](#)

Frank Maher discusses how to ensure your law firm is compliant with relevant professional, legal, regulatory and client-imposed obligations.

## RISK UPDATE