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Articles

[A year in review](#)

Frank Maher's review of Professional Indemnity Insurance over the past twelve months. Published by Willis.

[Lemma: a tale of murder, conflicts and more: the latest chapter](#)

An insurer with a short but colourful history.

Events

[Souscripteurs Internationaux de Paris, 4 October 2016](#)

Frank Maher will be speaking on the subject of unrated insurers.

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

Our predictions of law firm risk

In this issue we look at some areas of risk on the horizon for law firm general counsel, risk teams and partners interested in risk issues (as all should be). We draw on our experience as a law firm advising a wide cross-section of law firms – UK and overseas – and insurers on professional regulation and professional indemnity insurance.

Anti-money laundering

Compliance may be challenged by increased numbers of overseas buyers taking advantage of the weak pound, post-Brexit, and by solicitors seeking out work in higher risk jurisdictions.

Artificial intelligence (AI)

Larger firms are increasingly exploring AI as a means to drive down cost (perhaps also with a weather eye to the publicity). The ability of such systems will doubtless increase exponentially. We have seen risk issues with existing technology – a case management system which overlooked a particular date, and alleged undervalued settlement of personal injury claims using computer systems. But perhaps the biggest risk is that the technology will reduce the need for junior staff and drive a change in the structure of law firms: the impact on the traditional law firm's pyramid structure will affect profitability. There is also the potential for systems developed by IT companies to be white-labelled by law firms, perhaps to service repeat work, potentially raising ethical questions over the independence of their advice.

Brexit - What does it mean for law firm risk?

For an article in New Law Journal by Frank Maher, see [here](#).

Cyber

The Times reported on 11 September 2016 that 'Lawyers are losing more money to online fraudsters'. Firms will increasingly buy insurance. However, the policies are largely untested, and they may discover the gaps in cover. We have reviewed a variety of wordings and some are clearly better than others. It is not just about the premium, but how the policy may respond as a matter of law. We can advise on policy wordings before you buy, as well as coverage disputes afterwards: there are many traps for the unwary.

But insurance should not be the starting point: as with any aspect of risk management, you should address the risk first, and insurance is there to cover the risks which you cannot otherwise address. The Information Commissioner's report on [Data security incident trends](#) for Q1 2016/17 (April to June 2016) reveals a wide variety of cyber incidents for which the true underlying cause is human error. Awareness raising is therefore critical. Our online training, *Phishing for Trouble*, has been used by a wide variety of firms in the UK and overseas. However, maintaining awareness is critical, and we are now offering a further course, *Phishing for Trouble 2*. Each is available for £15 per head plus vat (minimum two). Contact Francis.Dingwall@legalrisk.co.uk.

Data Protection

The EU General Data Protection Regulation (GDPR) will come into force in member states on 25 May 2018. The Law Society advises that firms should appoint someone with appropriate authority to take the lead on data protection and that larger firms are likely to appoint a specialist data protection officer. However, the availability of suitably qualified data protection officers is likely to pose significant practical challenges. Firms should be addressing this now.

Firms with offices outside the EU should also be giving careful consideration to how they share data across their organisations. The anticipated challenge to the new Privacy Shield is another obstacle to simplifying compliance. We suspect that a number need to revise their procedures.

The recent £40,000 monetary penalty imposed on a doctors' practice demonstrates that the stakes are high. We advise on data protection compliance.



How would your systems hold up against cyber crime? Many organisations display the 'toasted marshmallow effect': hard on the outside, soft on the inside.



Ethics

The strong culture of training in ethics which pervades practice in the USA, a product of the fallout from the Watergate scandal, has not so far been reflected in the UK. However, issues of independence have been critically examined, most recently in the report commissioned by the SRA from Claire Coe and Dr Steven Vaughan, [Management of Client Relationships by Large Law Firms](#).

Even experienced lawyers in City firms make ethical mistakes, and we are often called upon to advise on SRA investigations.

The SRA's Statement of solicitor competence will compel solicitors to consider what training they have had and may need on an annual basis. (See section A, *Ethics, professionalism and judgement*).

We provide ethics training in workshops and are producing an online introductory course. Contact info@legalrisk.co.uk.

Meanwhile, for a gentle and enjoyable introduction to the topic, Legal Risk partner Francis Dingwall has written a series of short stories, *Cautionary Tales*. Copies are available for £10 each including delivery.

Northshoring and offshoring risk and compliance

While the demands on risk and compliance teams may ebb and flow, firms may be unwilling to see the size of their team grow to meet peak demands. Some have resorted to offshoring or 'northshoring' their teams to cut costs, but some may feel this is too remote. There is an alternative.

Many leading City, global and overseas law firms use Legal Risk LLP to fill the gap – either for 'overflow' resource, or because they want a second opinion from practising solicitors. Further information [here](#).

Professional indemnity insurance

Firms which are considering mergers and acquisitions, or demergers, partners who are joining or leaving firms, and those who advise them, should be factoring into their assessments the impact of possible changes which may arise from the next review of the Minimum Terms and Conditions (MTC) by the Solicitors Regulation Authority (SRA). This was originally expected this autumn but we understand is now put back until the spring.

The possible changes are causing some difficult issues to be addressed already in our experience and cannot be ignored on the basis that the detail is not yet known. We have advised on the insurance implications of many hundreds of law firm mergers and acquisitions, including many successor practice issues and due diligence.

Most firms are in the throes of renewing their cover at present and finding it very competitive with significant reductions in rates from last time. However, this carries the risks that insurers may downsize their claims teams, or reduce quality, and that there will be more coverage disputes in the pipeline.

The decision of the Supreme Court in [Impact Funding Solutions Limited \(Respondent\) v AIG Europe Insurance Ltd](#), on the trading debt exclusion, is currently awaited. Meanwhile, a further case is proceeding to the Supreme Court - [AIG Europe Ltd v OC320301 LLP \[2016\] EWCA Civ 367](#) – on aggregation, and has been provisionally listed for 10 October 2016. We are acting in several cases where the result of this appeal is eagerly awaited.

A further area of possible change in relation to insurance is the SRA's consultation, [Looking to the Future - flexibility and public protection](#). The possibility of employed solicitors offering services to the public in unregulated law firms, other than in relation to reserved legal activities, could bring about a significant reduction in the number of firms which are required to have MTC-compliant insurance. If the changes take place – in the face of strong opposition from the Law Society - one can envisage firms handling client relationships but outsourcing the conduct of litigation to an SRA-regulated practice – much as country solicitors used London agents to conduct High Court proceedings in the past.

Property risk

Many lenders are changing their terms and will not lend on leasehold property with less than 85 years to run. One is requiring '75 years plus the mortgage term' – so in effect 100 years in many cases. For some, we have heard that there may also be issues if any other property in the same development has less than their prescribed minimum to run. Requirements such as these could make property unsalable in future and could create a significant risk for conveyancers.

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Note

This newsletter is a general guide. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice.

Subjects covered change constantly and develop.

No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this.

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