

Contents

Risk Forecast 2017	1
Panama Papers: the fallout	1
How we save clients money	1
Cyber Risk and Data Protection	2
Compulsory professional indemnity insurance schemes	2
Referral arrangements	2
Brexit (and Ireland)	2

Articles

[A rogue in your midst \(Pt 3\)](#)

Frank Maher's last article in the series on rogue partners & employees. First Published in New Law Journal January 2017.

Events

[The Law Society of Northern Ireland: Anti-Money Laundering and Financial Crime Update](#)

Sue Mawdsley will be delivering four seminars across Northern Ireland covering the Fourth AML Directive, Criminal Finances Bill and Law Enforcement position.

[Ark Group's AML Compliance for Law Firms](#)

Sue Mawdsley will be chairing and speaking at the conference. Clarifying the evolving compliance challenges facing legal services businesses, including up-to-date guidance on the 4th Money Laundering Directive and changes to the consent regime.

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

Risk Forecast for 2017

Our predictions are set out in a recent article by Frank Maher, [Law Firm Risk and Compliance: A Review of 2016 and Forecast for 2017](#).

Panama Papers: the fallout

Global efforts to conquer tax evasion continue apace, putting professional firms in the spotlight. This will only increase, as the Financial Action Task Force mutual evaluation for the UK approaches in 2018. We are learning valuable lessons from the experiences of other countries which have recently been through the process, with varying degrees of success.

Some firms which were mentioned in the Panama Papers are being investigated by the Solicitors Regulation Authority (SRA) and we are advising on certain aspects of this.

A meeting of tax agencies took place in Paris this month at the Organisation for Economic Cooperation and Development (OECD) - the Joint International Taskforce on Shared Intelligence and Collaboration (JITSIC). 30 tax agencies are said to have identified a list of 100 professional advisers, including lawyers and accountants, for further investigation.

In the UK, press reports indicate that HM Revenue & Customs (HMRC) are increasing their efforts to target middle-class earners and small and medium-sized enterprises (SMEs).

HMRC have indicated that they will be serving data-holder notices on firms seeking information on the beneficial ownership of offshore companies and trusts. This gives rise to concerns over legal professional privilege, on which the Law Society has expressed concern. We frequently advise firms on privilege issues in the context of financial crime investigations.

Schedule 20 of the Finance Act 2016 is now in force. It provides for penalties for enablers of offshore tax evasion or non-compliance. Professional firms will need to have procedures in place to protect themselves. We are advising on these issues.

The Criminal Finances Bill proposes criminal penalties for professional firms if they fail to implement adequate procedures to prevent facilitation of tax evasion. This is not solely a concern for firms providing tax advice: it is not uncommon for clients to ask for the firm's bill to be addressed to a different party, which could have tax and VAT consequences. The Government has published [fact sheets](#) to accompany the Bill.

The provisions will require formal risk assessment, communication and training, and ongoing monitoring. These are issues on which we advise many professional firms.

While the legislation appears to be targeted only at tax evasion and not tax avoidance, the dividing line may not always be clear, the client may withhold information from professional advisers, and there may be ethical questions about how far firms are prepared to go in advising on aggressive avoidance schemes which may put them in the spotlight.

We advise many firms on ethics questions, and in cases where partners and staff have crossed the line, giving rise to SRA investigations, claims and partnership issues. We also provide training.

How we save clients money

We have had a number of successes for professional firms which have saved them substantial sums. These include three cases where the Financial Services Compensation Scheme declined applications for compensation after insurers had become insolvent. The firms were all facing substantial claims, one approaching £500,000. We were able to secure compensation, in each case on different grounds.

In another case, insurers declined indemnity cover on the ground that the claim was outside the scope of cover. Again, we have now succeeded in forcing the insurer to pay.

An indemnity which we drafted for one firm on the sale of one of its offices enabled it to recover a substantial sum in respect of unexpected six-figure professional indemnity liabilities arising from work done in that office prior to sale.

We also keep many firms on the right side of the law, through our pay-as-you-go and subscription helpline services, when facing daily compliance challenges, such as balancing their reporting obligations under anti-money laundering legislation with their duties of confidentiality to clients and client privilege.

Panama skyline



Data Protection: Pixelated to protect identity

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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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Cyber risk and Data Protection

The [latest report from the SRA](#) makes clear that this has not gone away. The report stresses that, as most cybercrime targets people rather than systems, firms should protect themselves by focusing not just on technology but also on people and training.

We have provided many firms with our low-cost online training package, Phishing for Trouble. We offer two courses and these are also available in both UK and international versions.

The recent £150,000 monetary penalty relating to the theft of an unencrypted hard drive from insurer Royal & Sun Alliance is significant; the [Information Commissioner's notice](#) makes salutary reading for law firms. The drive was stolen from a data room which was not protected by CCTV. Access by staff and contractors was unmonitored.

Penalties will increase under the General Data Protection Regulation (GDPR) in force from 25 May 2018. We remain concerned that many of the insurance policies on offer do not meet firms' real needs, and even where they purport to provide cover for fines, there are significant concerns that cover may be excluded by public policy in many commonplace scenarios. The starting point has to be ensuring your people and IT systems are as resilient as they can be, not starting from the perspective of buying insurance.

The Information Commissioner observed in a recent speech that smaller businesses tended to be "less well prepared. They have less to invest in getting it right. They don't have compliance teams or data protection officers. But small organisations often process a lot of personal data, and the reputation and liability risks are just as real." She stressed the importance of accountability in the new regime, the obligation to understand the risks that firms create for others, and to mitigate those risks, creating a culture of privacy, not a box ticking exercise.

The ICO has published an [update](#) setting out what guidance organisations can expect on the GDPR over the next 12 months.

We advise firms on data protection compliance and training.

Compulsory professional indemnity insurance schemes

Many professional bodies have compulsory insurance schemes. These may offer benefits which would be unavailable in a completely free market, but inevitably some insureds maintain (not always correctly) that they are subsidising other firms, and put pressure for reform on Law Societies and other regulators. We have wide knowledge of schemes around the world and provide independent advice and reviews.

The open market scheme for solicitors in England & Wales will be subject to yet another SRA consultation in the next few months. This may be a significant cause for concern even for major law firms, for reasons explained in [Law Firm Risk and Compliance: A Review of 2016 and Forecast for 2017](#).

Referral arrangements

These are also in the spotlight again. The Association of British Travel Agents is reported to be seeking to crack down on 'unsubstantiated' holiday illness claims, and the SRA are investigating in a number of cases. We draft agreements, taking account of the ban on referral fees in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) and advise on compliance and investigations.

Brexit (and Ireland)

In the hope that there is something left to be said about Brexit, we proffer the following.

A few hundred UK solicitors have been admitted in Ireland, though we suspect that in many cases this is more for the kudos of being a European lawyer than any need for specific practice rights post-Brexit. We have advised on the implications, which need thought.

Some UK firms are considering opening Dublin offices, and some have already done so. The Justice Minister Frances Fitzgerald has announced that Ireland's new Legal Services Regulatory Authority will be fully functioning by the end of Summer 2017. This is the first step on the road to limited liability partnerships, which will be permitted when Part 8, Chapter 3 of the Legal Services Regulation Act 2015 is implemented. There are some problematic aspects to the provisions, potentially exposing management as well as the individual primarily responsible, which may limit protection, and this applies equally to Irish-based firms.

The SRA's recent proposals for reform of the Solicitors Qualifying Examination and anticipated proposals for reform on professional indemnity may cause unwelcome complications for English & Welsh firms seeking to establish in Ireland.