



## Conferences and Events

### 21-22 September 2009

Gartner Information Security Summit  
London. Gartner: 020 8879 2430

◆ This premier event provides strategic insight, best practice and roadmaps demonstrating key information security challenges and the steps to be taken to protect vulnerable organisations by addressing them.

### 29 September - 1 October 2009

Law Autumn 2009  
Olympia, London  
The Solicitors Group: 01332 226601

◆ This event should be a fixture on every law firm's calendar. High-profile and authoritative speakers will address issues surrounding property, personal injury, civil litigation, employment, commercial leases, wills and probate and other areas of legal practice. The event is supported by a large exhibition.

### 8 October 2009

Information Age Autumn Forum  
London. Information Age: 020 7250 7043

◆ Making better use of the vast amounts of information and data they gather and hold, decision-makers at board and partnership, senior management and executive levels, must be able to understand data for business exploitation. This conference brings together leading authorities to

discuss how organisations can improve their use of information resources.

### 14-15 October 2009

Legal IT Forum 2009  
Wales. Informa Business: 020 7017 7200

◆ This event offers the opportunity to hear from the next generation of IT strategists addressing: new legal pricing; cloud computing economics; outsourcing; social networking; IT business development; marketing with IT; and maximising profitability; among many other topics.

### 22 October 2009

Human Rights Law Conference  
London. Sweet & Maxwell: 020 7393 7859

◆ This event will focus on the latest developments asylum and immigration, judicial review, extradition, the new inquest system and public order, policing and protest

### 27 October 2009

Employment Law Update Seminar  
London. Jordans: 0117 918 1490

◆ This is a comprehensive update on the latest developments in employment law, including unfair dismissal and redundancy, discrimination and equality, latest case law and advocacy tips and traps.

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- Authors of the *Lexcel Office Procedures Manual*

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- Advice and training on risk and compliance programmes, including the CRQS adaptation of ISO 9001 for commercial law firms

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- Fixed price compliance audits – contact:  
Rupert Kendrick (rupert@web4law.biz)

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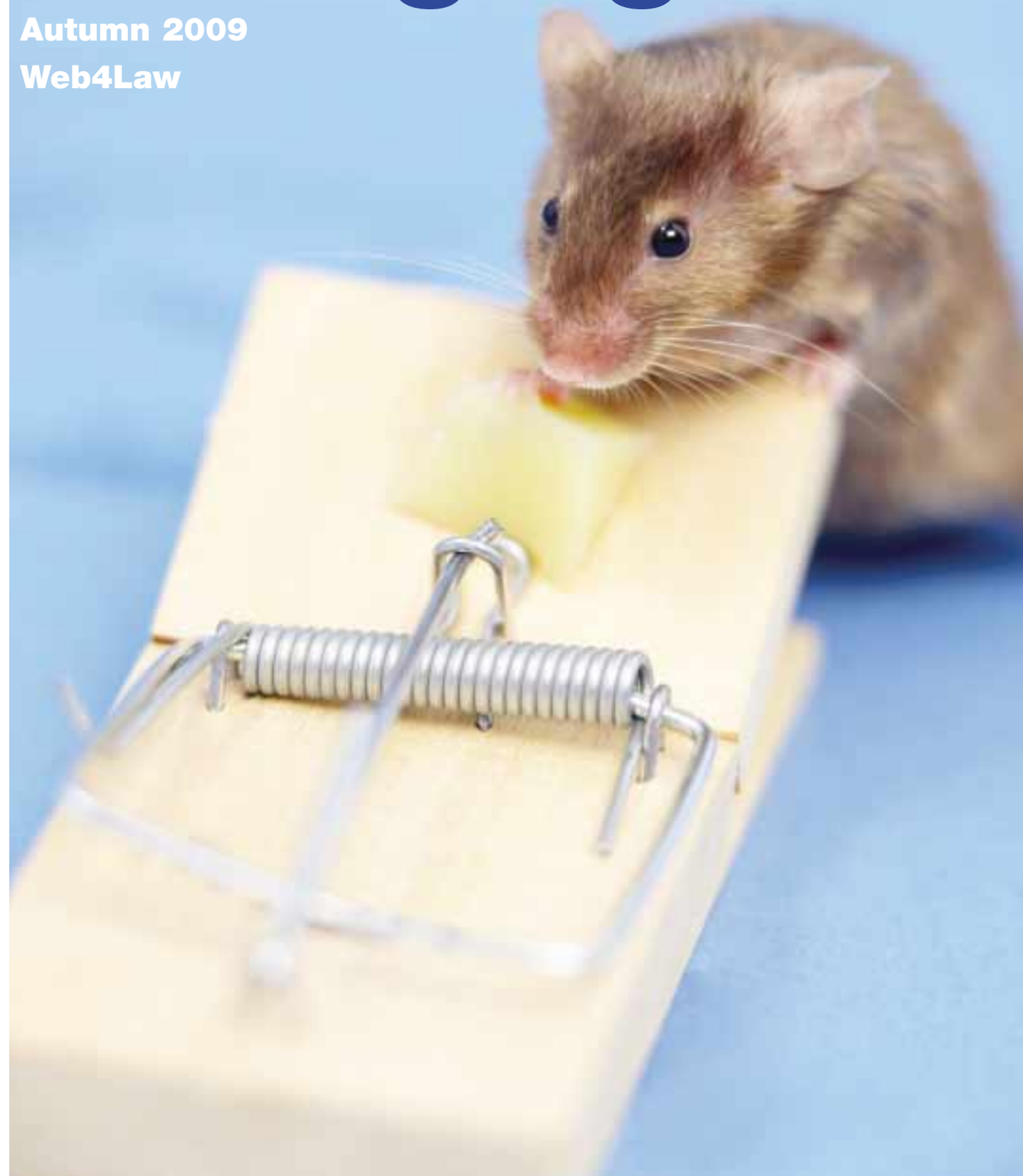
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# Managing Risk

Autumn 2009

Web4Law



- Handling the PII renewal process
- Manage and lead IT to manage risk
- The lawyer-banker relationship
- Defusing the partnership timebomb



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Managing Risk  
Autumn 2009

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## Editorial

Welcome to the Autumn 2009 issue of *Managing Risk*. As might be expected, the most pressing issue for most law firms will be to ensure that the lowest possible professional indemnity insurance premium for the coming year is secured by 1 October.

In the Summer issue, Steve Holland, executive director of Lockton Professions, provided some insightful observations on trends over the past ten years in the professional indemnity market.

In this issue, he takes this forward with some expert advice on securing the best deal, even at this late stage in the process. This was originally presented in the format of a webinar and a good deal of sound advice is offered.

Elsewhere, Alan Carton, solicitor and managing director of InPractice UK, offers guidance on practical steps for integrating IT into a firm's risk strategy.

Pam Grover-Mitchell, a risk executive in Lockton Professions, looks at partnership risk issues that arise in neglecting an equality strategy.

George Bull, partner in Baker Tilly, focuses on how law firms should manage relationships with their banks.

The Lawyer Profile in this issue features Tony Cherry, partner in Beachcroft, who offers some thoughts on some critical risk issues facing almost every firm.

The events page shows that, recession or no recession, there are plenty of developments in the legal sector to concern law firms of all types.

As always, feedback and suggestions for coverage are more than welcome.

*Rupert Kendrick LL.M*  
Editor

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## Handling the renewal process

### Can you explain the relationship of insurer and broker?

The relationship should be one of a consultant as well as an agent. The broker should be regarded as owing their duties to the law firm client and not the insurer, that is, brokers are contractually bound to act in the best interests of the client to seek the best price for the law firm and not the best price for the insurer.

However, the law firm client should also look to its broker to perform more than an agency service on renewal. The broker should be able to provide advice on the market and related compliance issues to enable a firm to secure the best deal possible from the market. In this regard, firms should be wary of the amount of 'sub-brokering' that occurs. If a firm approaches non-specialist general insurance brokers, they are likely to pass the lead up the line to those who are specialist and split the fee or brokerage with them. There is not necessarily anything improper in this, but it does inevitably run the risk of diluting service standards, especially when things go wrong and a claim notification needs to be made to the insurers.

### What are the special concerns in this renewal round?

There have been concerns over the appetite of insurers to continue to underwrite the whole profession. Many of the existing qualifying insurers continue to move away from sole practitioners and two to three partner practices, as their claims experience has shown that these firms are unprofitable. Allianz has entered the market this year as a new qualifying insurer and declared its interest in writing up to £10m of premium income (circa 5% of the market). However it is only interested in writing four or more partner practices.

An existing qualifying insurer, International Insurance Company of Hannover (AA-rated insurer which is one of the best credit ratings on the panel of 'qualifying insurers') has partnered exclusively with Lockton and has agreed to write a significant book of business at very competitive prices, but only for those firms with a good track record.

How all this will affect the total premium pot of £226 million is difficult to predict. There is a great desire from the established insurers to push up rates but this may well be tempered by the entrance of new capacity.

Certain profiles of firms that are small and historically 'conveyancing-reliant' may struggle to secure cover at a suitable price. There are many concerns over mortgage fraud and negative equity and this is inevitably leading to concerns by some as to the risk presented by some firms that are already suffering as a result of the property market anyway.

Timing to secure the quotations from the qualifying insurers will be crucial this year. Firms that have waited until the last minute to secure a good deal may have done well in a soft market; however, the market dynamics are changing and this strategy should be seen as more risky than ever. Last year, a number of insurers changed their underwriting approach to their target market. This means that a firm which simply takes the view that it will renew with its current insurer could receive a nasty shock. If the insurer has changed its rating model for a certain profile of firm, the premium may increase significantly even if that firm has not had any claims.

The prospect of insurers being unwilling to continue to write unprofitable business will lead to a significant increase in the number of firms in the ARP. Some insurers are predicting a fourfold increase in the number of firms in the ARP.

### Much is made of formal quality and risk systems such as Lexcel: do they assist you in your dealings with the underwriters?

Risk management is regarded by insurers as an absolute 'must' for any well run law firm. Whether this is through the implementation of bespoke risk control and loss prevention systems and procedures, or through formal quality accreditation such as Lexcel, it is regarded by insurers as a vital part of the risk profile of a firm.

Insurers will want to see that improvements

[continued on page 3](#)



Steve Holland, executive director of Lockton, recently conducted a webinar for Central Law Training which focused on the PII renewal process. Here are extracts of some of the key issues.

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Managing Risk ♦ Autumn 2009

## 'Frightening' survey findings for profession's future

UK law firms are still failing to plan strategically, with seven out of ten law firms admitting they do not have a strategic plan that they review on at least an annual basis. One in five firms is still failing to plan any form of strategic initiative to carry them through the uncharted territory of The Legal Services Act 2007.

The latest research into the business and future plans of legal practices are revealed in The Future of the Legal Industry Survey. The survey was undertaken by The 360 Legal Group with 188 law firms, from sole practitioners to firms with 200 or more employees participating.

Worryingly, while seven out of ten law firms feel that selling skills is becoming increasingly important, sales were also highlighted in the survey as the area of the business that is least well handled by senior staff.

Other findings include:

- around a third of firms find the prospect of investing more in technological solutions to reduce back office costs and increase connectivity to clients a challenge;
- around a quarter of firms are considering outsourcing either to back office providers or bulk handlers;
- IT-based marketing is still underused with just one in ten firms using dedicated CRM software such as Logical Office;
- less than a quarter see the Solicitors Regulation Authority as supportive.

Viv Williams, managing director of the 360 Legal Group, commented: "A significant

number are still failing to grasp the challenges and opportunities that face them. The implications are frightening. A significant proportion of law firms, many with ageing equity partners, are proving incapable of adapting their management techniques to run practices as businesses of the future.

"It is essential for law firms to get a strategic plan in place – and stick to it and if the task of strategic planning seems daunting, they need to be bringing in professional support to provide the planning and focus needed.

"If a badly-run practice acquires another badly-run practice, this simply makes it a bigger badly-run practice! And among the similar percentage looking to sell or merge it is likely that many will have placed unrealistic valuations on their practices.

"With the full implications of **The Legal Services Act** likely to be realised in 2011 bringing with it the opportunity for private equity funding, law firms should also now be considering planning and investing to correct their situation and give themselves a competitive advantage in attracting investment in the future."

[www.360legalgroup.co.uk](http://www.360legalgroup.co.uk)

[continued from page 2](#)

Steve Holland was interviewed by Matthew Moore

to the way the business risks are managed are then reflected in the firm's loss record. A firm which cannot demonstrate good systems with a good track record will not reap the dividends in their premiums. A firm which implements risk management or gains Lexcel should not expect insurers to rate this within its premium calculations immediately. It will take time for the new way of working to have a material effect on the risk profile as there are likely to be issues lurking in the filing cabinet that did not benefit from the risk improvements. If a firm has run into problems through inadequate retainer, for example, it may have many hundreds or even thousands of matters where that problem will take time to work out of the matters being handled.

### Any practical suggestions on how firms can help themselves?

A point is always made, and remains as true as ever – take care over the proposal document. The manner in which a firm presents itself to the market will have a significant bearing on how well it fares.

Do not think that, rather like the holiday market, a bargain will be obtained by buying late. There may be a rather nasty surprise. Finally, a firm should not see its PII as the same sort of commodity as a household or motor insurance policy. All things being equal, it is good to develop a relationship with an insurer, especially in relation to the primary cover of £2m (£3m for LLPs). ♦

Managing Risk ♦ Autumn 2009

## Law firms and their bankers – a new stage in the relationship

Former prime minister, Harold Wilson, once observed that a week is a long time in politics. When it comes to relationships between law firms and their bankers, the last two years probably seem more like an eternity.

If we cast our minds back two years, we see the end of an era during which the experience of most banks in lending to law firms had been very good. While a small proportion of overdrafts and loans had been irrecoverable, the overwhelming majority of banking relationships with law firms generated good profits for the banks. As a result, banks were competing with each other to lend money to law firms. All the banks had surplus liquidity and so were prepared to accept modest returns on arrangements supported by relatively relaxed documentation.

In that market, firms were able to shop around for the best deals from banks. With money being a commodity product only differentiated by price, banks found themselves pressed to extend differentiation into service levels and partnering with their customers.

### Upside-down relationships

In the succeeding two years, banking relationships have been turned on their head. We have witnessed a near-collapse of the banking system requiring government intervention in many jurisdictions around the world. While this has undoubtedly been a shock to banks and law firms alike, it has almost been the undoing of the UK government which had asserted that, during its time in power, it had brought an end to the cycle of 'boom and bust'. The UK government has, however, earned plaudits for its action to support UK banks. The question now focuses on whether the government has done sufficient to secure the banking sector, so restoring both business and consumer lending, without storing up impossible problems for the future.

As a result of the dark days through which UK banks have passed, their ability to lend has declined markedly, while the cost of lending has increased substantially. Most law firms are finding that the cost of debt has increased, while up-front fees are frequently required for facilities. Furthermore, members of LLPs may be required to provide more personal security in respect bank of facilities. As the liability is

not joint and several, senior partners may be asked to put up considerably more security than junior partners.

### Pricing models

The banks are, more than ever, ensuring that their respective pricing models are aligned to the credit function. Credit teams are much more heavily involved in any new money requests and annual reviews of existing facilities.

While there is a feeling that uncertainty over the economy is coming to an end, this is not yet reflected in longer-term bank commitments. Pricing for longer-term arrangements increases substantially. Accordingly, at the present time, there are very few new deals providing a debt package beyond a three-year period.

### Relationship assessment

Most banks are now adopting a far more critical approach in assessing the overall value of a relationship with a law firm. Law firms that have both debt and deposits with the same bank will often be able to command better prices. The effect of this is that firms that have multi-banked, placing client money deposits with one bank while securing overdrafts with another, may now find they are having to review the way they organise their banking relationships.

Relationships are key; it is important to know both the principal relationship contact at the bank, and their alternate should the principal contact be unavailable. Likewise, a firm should ensure that the principal bank contact knows its key partners and finance team members.

Regular and open dialogue is important. Bankers' customary aversion to nasty surprises has now become profound. No matter how tempting it may be not to disclose bad news until there is no alternative, this is unlikely to improve the quality of the banking relationship in the longer term. While banks prefer certainty to uncertainty, it is also helpful to notify bankers of pending problems so that you can work together to minimise their impact.

### Credit

In the current climate, bank credit committees are paying much more attention to the



At a time when financial risk issues are critical for law firms, George Bull, head of the professional practices group at accountants, Baker Tilly, reviews the current state of play in law firms' relationships with their banks.

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sources and uses of cash in professional firms. It is important to make sure that the firm's bank understands this clearly because the timing of profit distributions and tax payments may mean that the profit position and the cash requirements for any particular year can be very different. As fee income reduces, cash paid out of the firm may increase to cover profit distributions and tax payments. This will not come as a surprise to bankers who are familiar with professional firms but those who are more used to corporate clients may react unfavourably.

In the run up to 31 July, there were horror stories about banks unilaterally reducing 'unused' overdraft limits, so preventing affected firms from applying partner tax reserves to meet the liabilities for which funds had been earmarked. This emphasises how important it is to ensure that the firm's bank understands its distribution policy and the way in which partners' tax payments are dealt with. Even if partners have substantial undrawn profits in their firm, if cash is not available then those funds remain inaccessible.

Even before the credit crunch, many firms were coming to the view that the traditional practice of a full, annual profit distribution had outlived its time. Many were beginning to think in terms of operating a less-than-full distributions policy, to enable firms to fund growth out of retained profits. Tax considerations often required structural changes to make sense of this. Every firm now, however, faces the wrath of its bankers if it attempts to pay partners more than the profits earned.

### Management information

Heads of finance in law firms have also had to acquire rapidly the unaccustomed skill of managing the firm's finances to comply with covenants in loan documents. A minor breach of loan covenants or conditions could mean that the loan is technically in default, producing what might appear to be a disproportionately harsh response from the bank. Even routine matters such as the late provision of management and annual accounts are subject to far less tolerance than in the past. As a result, some firms now feel that minor covenant breaches are being used unilaterally by banks to increase the pricing of facilities.

The provision of management information raises questions of accuracy and timeliness. Banks generally favour relatively short documents, focussing on information rather than data, delivered in a complete form according to an agreed timescale. In the real world, that is not always possible. If figures can't be finalised, it is generally preferable to provide the bank with provisional figures on time, indicating those areas where amendments might be required. Again, communication is key.

### Borrowing facilities

In these uncertain times, it is important to ensure that the firm's borrowing facilities are correctly structured. It probably does not make sense to have all the facility 'on demand' if it is heavily used. This is because the withdrawal of the facility (or even an increase in the cost of it) could cause significant difficulties for the firm. This is less likely to be a problem if the facility has only been negotiated to cover exceptional needs.

While term facilities are more expensive than on-demand facilities, they do provide law firms with welcome certainty as to the availability of funds and pricing. Prior to the credit crunch, law firms often avoided term facilities as they might result in non-utilisation fees, whereas on-demand facilities did not. Now the position has reversed, with banks increasingly charging non-use fees for on-demand facilities, or larger up-front fees.

While term loans and revolving credit facilities are now being used by far more firms, across the whole market banks report that on-demand funding is still prevalent.

### Cash for growth

With business confidence beginning to lift, albeit in an environment with many contradictory indicators, it is worth looking back to the experience of previous recessions. Then, it was generally the case that more firms went out of business during the recovery phase than during the recession. This was because they ran out of cash to finance growth. With many law firms now beginning to feel that the worst should be over by Spring 2010, strong cash control and clear cash flow forecasts will continue to be vital, daily management tools. ♦

## Manage and lead IT to manage risk

Risk management and IT both impact on virtually every aspect of legal practice. Most firms can improve their performance by addressing how senior management lead and direct IT resources. This shifts the focus of in-house IT personnel from fire-fighting and routine maintenance to the core business of delivering legal services efficiently and effectively. Where should IT focus its efforts?

### Client inception processes

More firms are now automating the verification of client identity for anti-money laundering compliance and extending this into routine first steps in the case. This is achieved by using workflow tools built into practice, matter, case or client relationship management systems, ensuring that 'risky' clients are identified – although there could be more credit checking in most firms at this stage. Issues are resolved and followed up automatically by the issue of rule 2 letters, terms of business, and fee estimates. They are then tracked with prompts that ensure their completion and acceptance before work proceeds.

At this stage, in addition to fee estimates, many firms fail to build into the system an effective billing profile that can be tracked and pre-empted when the billing limit is being approached. A defined billing profile ensures bills are rendered regularly and promptly as early as possible so as to reduce the risk of disputes over payment.

Automated systems create more opportunity for a lawyer to manage client expectations at an early stage in order to avoid dissatisfaction later on, but actually addressing this crucial element also requires human determination. Technology can only go so far. Beyond this, mindsets have to change.

### Automated legal workflow and document production

Automated workflows that incorporate automated steps and legal knowledge management processes are the most effective way to eliminate human error. These contrast with less sophisticated 'automated document production' systems using defined steps and templates. They are a good stepping stone in developing improved work processes, but they leave

lawyers with decisions to make over which steps to take and the documents to use – decisions that less qualified and experienced legal personnel may not be equipped to make.

The risk of error will increase as firms are under pressure to reduce operating costs. More 'intelligent' automation is needed in many areas to remain competitive. However, developing intelligent automated documents and workflows – where decisions are made in response to question answered by the operator – requires investment in legal and technological time and expertise. Practice and case management suppliers provide varying levels of automation and intelligence – a key differentiator between suppliers and products.

### HR and personnel development systems

Many risks concern personnel, but relatively few firms invest in dedicated systems - like Select HR1 or HRNet2. These can be employed to manage day-to-day routine HR processes, such as recruitment, incidence of illness, holidays, disciplinary events and training records. The greatest risks lie in failure to create supporting systems to establish, track, report and respond effectively on personal performance assessment, including appraisal systems. Firms operating without easy access to accessible systems that provide this information are increasingly likely to struggle to compete.

### Integrated streamlined applications

Generally, the better the integration of tools and applications, the lower are the risks to the practice. Accounts, case management, telephone message processing, file notes, recording time, diaries, document location, scanning, e-mail and document tracking are routine tasks between which lawyers want to move seamlessly. Moving from one application to another wastes time. Duplication of time and effort often results in tasks being neglected because they involve repetition. Data tends to be more reliable when less effort is needed to manage it. Storing data in a single resource is more efficient. Smaller firms tend to struggle to achieve this level of integration, but there are now 'integrated' applications that will help, such as eXpd83.



Allan Carton,  
solicitor, director,  
Inpractice UK,  
explains the  
interaction  
between IT and risk  
management and  
demonstrates the  
potential for IT to  
help manage risks.

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### Outsourcing IT infrastructure and applications:

Effective, secure, reliable IT is now essential to the operation of every law firm. However, increased demand for improvements in automation, security management, remote access, and integrated applications and communications make management of IT increasingly complex, involving sophisticated areas of specialism that generalist IT personnel cannot operate.

Managing this effectively requires varying degrees of external expertise for virtually every firm in order to ensure that adequate security and standards of service are maintained. The availability and standard of third party support have increased considerably over the past few years; all supported by radical improvements in online communications that make online delivery and support increasingly attractive.

In addition to the potential financial benefits, outsourcing IT releases in-house IT personnel to focus their efforts on the more strategic IT role of developing business and workflow processes. In turn, this enables a firm to manage risk more effectively in its core business – as opposed, for instance, to devoting time to fire-fighting IT problems. Outsourcing can be applied in many different ways.

Options range from third party management of servers in a firm's office, through to hosting and management of a few components. An example is outsourcing simple management of Microsoft Exchange

– including e-mail, spam, encryption, archiving, security, remote data backup and disaster recovery – or comprehensive hosting of applications remotely, accessible from the firm's offices or anywhere else. Critical areas of risk can be defined and managed in this environment with guarantees of availability and support for users either in the office or working remotely.

### Security and confidentiality of documents

Ensuring electronic storage, retrieval and distribution of documents, without loss or breaches of confidentiality or security, is a critical risk management issue and one where implementation of effective IT is essential. This is particularly so in the case of internal and external document sharing and collaboration. Apart from the need to manage e-mail, there are essential tools for managing the content of Word documents – such as Workshare4 which automatically strips out confidential metadata when distributing a document. Further benefits arise from sophisticated tracking of changes that go far beyond the current capabilities of Word.

### Managing risk and IT

The responsibility of the IT function, whether in-house, managed by a third party, or hosted, has to be clear; with objectives and accountabilities, timelines and a reporting line. Frequently, accountability is not clear and reporting lines are blurred. Accountability starts at the top with clear management direction and a desire to make the best use of IT to support the business, but IT people should be involved in determining priorities at senior management level.

### Key obstacles to successful use of technology include:

- lack of ownership of IT by heads of departments, which each have different needs;
- lack of change in working practices;
- lack of training on use of IT; and
- lack of appreciation of potential new ways of using IT.

These failings will limit the potential of IT as a tool for managing risk, so the starting point must be to address the role and interactions of the IT team to enable it to deliver effective solutions that help manage risk. They need the commitment and time to do it. ♦



## Defusing the partnership time-bomb

That there are women in law is hardly news. Still, the Solicitors Regulation Authority's (SRA) equality and diversity campaign has catapulted the issue of the fair treatment of women in the legal profession to the fore. The SRA has specifically tied its risk management policy to the equality issue, and is now intensifying its efforts to monitor firms' compliance with rule 6 of the Solicitors' Code of Conduct as part of its active promotion of equality and diversity in the profession. Are firms doing enough to ensure that the opportunities available to women solicitors are equal to those open to men?

### Hurdles

The number of women entering the solicitors' profession each year far surpasses the number of men. However, the majority of women leave the profession as senior associates, when partnership prospects clash with the prospect of having a family. Although firms invest heavily in their female talent, most fail to retain more than one female partner for every four male ones.

Additionally, partners find themselves stretched; they must bring business in, develop it, network, brand-build and nurture along assistants' careers, fitting in fee earning work when they can. Partnership is unwieldy and this is putting off male and female lawyers alike. In 2009, 15% of all assistants listed a senior non-partner role as their career goal, and the main aim of one in four was to leave private practice. Lawyers under 30 are particularly intolerant of work-life imbalance and tend to see partnership more as a straitjacket than a holy grail. If firms take no action, they stand to lose not just their female talent, but an entire 'generation Y' of assistants – a partnership time-bomb.

### Risk issues

Failure to attract the best candidates carries significant risk implications for law firms. How can they plug the brain drain?

- **Discourage women's tendency to 'de-select' themselves as partnership candidates**  
Communicate the message from the top of the firm down that, although balancing family with partnership takes commitment, it is possible. Hold out female senior assistants and partners, particularly those with families, as positive examples. Encourage their career progression.
- **Look out for indirect discrimination**  
Is the language of the partnership criteria

truly gender-neutral – for example, does it specify that the candidate 'be good at attracting new business,' or 'pursues new business aggressively'? There remains a large difference between how men (who comprise the majority of partner selection committees) and women communicate in the workplace.

Another example of indirect discrimination might be when a female assistant tries to return to the partnership after a second child, and concerns are raised about her client relationships or the quality of her work which were non-existent before maternity leave. Her firm would have to consider whether the concerns were justified, or reflected the unfair assumption that her family obligations would prevent her from committing to a career as a partner.

- **Have a battery of benefits**  
Parental leave, childcare vouchers, home working (with the technology to support it), non-standard start/finish times, job-sharing, sabbaticals and unexpected time out of the office are examples. Offer the same benefits to women and men, assistants and partners alike, to establish a level playing field.
- **Introduce part-time partnerships**  
Even when a three-day work week is impractical, the firm can accommodate a 40% reduction in target over a year. Take the time to educate clients; they will need to be reassured that, even though their partner is working part-time, their work will still take priority when it is appropriate that it do so.
- **Expand the partnership role**  
This might include what are now senior non-partnership roles (PSLs, risk managers and legal directors, for example) to make partnership more attractive to a wider range of talent.

From a risk management perspective, partnerships should demonstrate their compliance with rule 6 with a written equality and diversity scheme which includes a strategy for retaining women (as well as minority and disabled lawyers) to partnership level. Firms should review their performance regularly against the scheme's requirements, and adjust their strategy if need be. The SRA's initial impact assessment of its risk management policy, and diversity, is due in January 2010. ♦



**Pam Grover-Mitchell, risk management executive with Lockton, considers how equality and diversity issues impact on partnerships.**

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Managing Risk ♦ Autumn 2009



**Tony Cherry is the partner heading the industrial goods and services sector of Beachcroft. He specialises in legal risk management, product liability and safety, health and environmental issues. He lectures on risk management and is chair of the firm's internal committee on governance and risk.**

Tony Cherry was interviewed by Editor, Rupert Kendrick

Managing Risk ♦ Autumn 2009

## In profile

**What are the current governance and risk issues with which you are involved in the firm?**

At the moment, the firm is aiming for accreditation under ISO 9001 in the Autumn. This is part of the firm's drive to resolve issues on meeting and maintaining client requirements under service level agreements. We chose the standard in preference to Lexcel because we wanted a broad standard and one that would be instantly recognisable by clients.

We are also looking at any enhancements in compliance with the Code of Conduct, particularly the issue of supervision. Many firms will claim they are good at supervision, but it is often overlooked that supervision must withstand monitoring and measurement of performance.

Another issue for us is the quality of our information and data. On financial issues, the quality of our information is excellent, but on operational issues, which are much more difficult to manage and monitor, there is room for improvement and we are working towards processes and systems that will enable operational performance to be analysed much more effectively.

Our business plan is also under some review in terms of its composition. Business plans often focus on individual departments, with insufficient attention to the support for implementation. We are looking at this from a different perspective and trying to integrate the three key areas of our business plan: client services; business processes; and infrastructure to give a much greater impression of an enterprise-wide business plan.

**What would you identify as the key risk issues facing law firms as the new entrants to the legal services market emerge?**

I'm certain that the greatest problem for the profession is going to be the management of the changes that will follow. For instance, there will be huge changes resulting from the investment of outside capital in law firms. This will be compounded by changes in the regulatory environment. This has moved from an individual-based regulation to entity-based regulation. It is both a cultural and operational change the significance of which I suspect many firms have not yet fully appreciated.

One of the key changes for the profession will be to the culture of diversity. Diversity can be a great asset which allows for flexibility and creativity. On the other hand, it can also lead to considerable inconsistency in standards of client service if individuals use it to justify adopting their own approach. Diversity does not equate to anarchy.

The new entrants to the legal services market – 'Big Law' as I like to call them – will have streamlined and standardised processes established to provide commoditised services to high standards in terms of consistency of processes, service and delivery. Law firms have to be ready and able to meet that level of competition where the partnership culture lends itself to individuality.

**What would you identify as the key risk area for law firms in every day practice at the moment?**

Almost certainly, the greatest risk issue surrounds financial circumstances. Financial stress tends to lead to perverse behaviour from professionals.

The sense of instability leads to behaviour such as aggressive billing and in extreme circumstances, borderline, or even criminal behaviour. Often it's the behaviour of the office's 'lovable rogue' or 'charming eccentric'.

With the economic situation as it is, the combined pressure of shortage of work and increased pressure from clients to cut costs leads to a pincer movement in which finances are caught.

**Finally, what three key risk areas would you advise firms to address?**

First, be prepared for a PSU visit from the Solicitors Regulation Authority. Remember it has the power to close a firm down.

Second, make sure the firm has a sustainable distribution policy for both members and/or partners and that any debt policy is manageable.

Third, check the firm's business continuity plan. Ensure it is sufficiently robust. It is a client-facing risk and clients are becoming increasingly aware of the need for effective plans when tendering for services. ♦