

Damage limitation

Frank Maher advises on how to mitigate the fall-out from the credit crunch

You should certainly expect the unexpected, however unexpected that is," said Adam Applegarth, on his resignation as chief executive of Northern Rock. This applies equally to law firms.

Each day the profession faces new challenges which may not have been encountered before—a recent example being landlord solvency which threatened three law firms with closure of their offices when the electricity bill went unpaid.

Although the seeds have already been sown for some, and the damage done, many issues are capable of being mitigated if people think about them in advance.

People risk

- Employment issues are a significant issue. Firms making redundancies run the risk of stress-related mistakes, and not having smooth handovers of ongoing matters, perhaps leaving loose ends such as registration of mortgages. There may also be problems obtaining co-operation from staff after they leave, either for ongoing matters or in defending claims.
- Low morale in a firm often appears to filter through into a significant deterioration claims experience. Personal pressures may also result in a deterioration of standards such as dabbling and padding timesheets.
- Anxiety to attract sufficient work may also encourage more aggressive risk taking on conflict issues.

Client risk

- Suing clients for fees often results in counterclaims alleging negligence.
- Client secondments give rise to a host of difficult issues on liability, supervision and compliance.
- Client solvency is an increasing issue.
- Clients are becoming more focused on their legal spend, and law firm structures will suffer with clients wanting more work by partners rather than associates

—"the future of the law firm is not a pyramid"—a serious threat to the profitability of the traditional law firm model.

- Claims from overseas clients are also an increasing problem, and this is so for domestic as well as international firms.

Other combat areas

We can expect to see more challenges to the partner protection afforded by limited liability partnership (LLP) status, particularly where firms have not addressed the issue adequately in their members' agreement, perhaps simply adopting their former partnership agreement.

AIRMIC, the Association of Insurance of Risk Managers, warned that the credit crunch may be a "breeding ground for fraud". *American Lawyer* magazine, reporting on the case of a senior partner in a global law firm charged with fraud, where the US government is also seeking forfeiture

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of a staggering \$2.4bn, commented: "For the lawyers involved, the outlines of the story aren't flattering. A kind reading of the facts suggests that at best they unknowingly enabled a vast fraud to be perpetrated."

Much the same picture emerges in a number of major fraud investigations where we have seen firms seeking advice on notification and insurance coverage issues relating to hundreds or thousands of potential mortgage frauds.

Break clauses in leases are another risk area with falling rental values. Have you effectively documented whose the responsibility is for serving any notice? If you are serving a notice, whether under a break clause or other contractual provisions, service by the due date and on the right party is critical.

Tax schemes are increasingly under challenge. Expect claims from failed schemes, such as those relating to inheritance tax.



Regulatory risk

We are seeing more complex regulatory investigations by the Solicitors Regulation Authority, and particularly where the actions of clients and introducers have become subject to investigation, for example in developer mortgage fraud.

Firms borrowing large sums from banks need to consider whether the loan arrangements affect their ability to comply with the core duties in r 1 of the Solicitors' Code of Conduct 2007 and the new Guidance Note 7.

Anti-money laundering regulation is an area all firms should address regularly, but particularly the need for regular review, at least annual. Are you complying with ongoing monitoring requirements, where applicable?

Solvency of insurers is an increasing concern—not just when you take out cover, but also when a claim comes to be paid

several years down the line. The writer has acted for a leading law firm on a multi-million claim where the insurers included the collapsed Independent. Legal Risk LLP's *Top 100 Law Firm Professional Indemnity & Risk Management Survey 2009* found that concerns over security of insurers delayed renewals for 16% of respondents and 30% of top 30 firms. Insurer solvency may be a difficult issue to address directly, but it explains why many firms have asked us to review their terms limiting liability (not just financial caps), which neatly illustrates the opening remark that if firms address these issues in advance, they may be able to mitigate the risks. NLJ

Frank Maher is a solicitor and partner in Legal Risk LLP, specialising in professional regulation and professional indemnity. Website: www.legalrisk.co.uk