RISK MANAGEMENT in law firms has moved on dramatically over the past decade. At the turn of the millennium, few UK law firms except perhaps a handful of the very largest City of London practices perceived it as involving anything more than avoidance of professional liability claims, and even fewer did anything significant about preventing them. Indeed, prior to 2000, their incentive to do so was quite limited.

Solicitors in England and Wales enjoyed guaranteed availability of insurance cover through Solicitors Indemnity Fund Limited (SIF). Even though premiums were loaded for those with bad claims records, they were still subject to finite caps. Although many firms would buy more than the basic £1m level of cover, and would have to do so through the commercial market, claims payments over £1m were almost unknown and cover was inexpensive. Few other significant risks really seemed to beset firms – it was almost, if not quite, unknown for firms to fail financially, and life seemed rather easy. There would be a partner responsible for professional indemnity – completing the proposal form annually, notifying claims and being the point of contact with insurers or panel solicitors appointed by them. But that was about all that was required.

Changing attitudes towards risk management

Some of the larger firms in the United States had been developing their awareness of risk issues during the 1990s. Many firms had ‘loss prevention partners’, particularly those insured through the Attorneys Liability Assurance Society (ALAS), which required them to do so.

In around 2000, some of the larger firms started appointing general counsel, whether under that title or some other, with a wider remit to protect the interests of their respective firms. It may have been combined with fee earning, though increasingly during the last decade the larger firms’ general counsel have adopted non-fee earning roles. The role involved ethics advice, particularly conflicts issues which are a major issue for US law firms. Firms developed the role in different ways.

In 2000, SIF closed to future business and firms in England and Wales were required to obtain cover in the open market, which focused the minds of many on the need to up their game and demonstrate that they were actively managing risk. The Law Society established a scheme involving the provision of cover by qualifying insurers which was required to comply with Minimum Terms and Conditions (MT&C).

In the early part of the last decade some of the larger UK firms started appointing partners and managers with responsibility for risk. Most partners combined this with fee earning, and few firms outside the top 100 made such appointments. Surveys of the top 100 UK firms by Legal Risk LLP showed that there was a fivefold increase in the appointment of risk management specialists, from six per cent in 2003 to 29 per cent in 2005.
Increasingly, UK law firms have incorporated as limited liability partnerships (LLPs), partly as a means of helping to protect partner assets but also for other reasons including the perception of a transition to corporate governance standards. LLPs are not, of course, a risk management strategy in themselves but they can provide some peace of mind – usually sought against the backdrop of the statistically unlikely risk of a wipe-out claim, though hardly any firms have ever folded in this way. More significantly, as it has turned out, they provide some protection against business risk, on which more later.

Some overseas offices of international firms were prevented by local regulation or tax law from converting to LLP status. In addition, partners feared the risk of claims being made against them personally which extended beyond the LLP’s insurance limits. As a result of this, insurance products were developed, initially by Travelers (who named it a ‘Lifeboat’ policy) but later by other insurers too, to protect against personal liability. Other forms of insurance started to gain ground in the larger firms too – management liability (equivalent to Directors and Officers cover in a corporate environment) and employment practices liability cover.

The role of regulation in risk management

Money Laundering Regulations 2003

March 2004 saw the introduction of the Money Laundering Regulations 2003 (MLR 2003), which affected most UK law firms; similar legislation implementing the European Union’s Second Money Laundering Directive was enacted in most of the rest of Europe but had generally rather less impact than in the UK. Although the Proceeds of Crime Act 2002 applies to all persons, the MLR 2003 introduced requirements on firms in the ‘regulated sector’ for systems and training to prevent money laundering, identification procedures and record-keeping and reporting obligations. The ‘regulated sector’ for these purposes from a law firm’s perspective broadly includes real property, corporate, tax and trusts.

Firms to which the MLR 2003 applied were required to appoint money laundering reporting officers (MLRO), and a whole new compliance industry sector was born. The Law Society’s pilot guidance on money laundering, published in January 2004, advised firms to adopt a risk based approach to compliance. For many firms this was tied into the role of the risk management partner.

Despite resistance from lawyers to identifying clients and finding out the purpose of their clients’ business in order to satisfy the legislative requirements, the benefits of so doing from a risk management perspective were inescapable and must have served to reduce the profession’s claims exposure. Despite early fears arising from the imposition of criminal sanctions on law firm compliance requirements, there has been little evidence of any prosecutions beyond those which would have caught the criminal elements in the profession in any event, with one possible exception mentioned below.

The Clementi Report

2004 also saw the government-appointed Regulatory Review of Legal Services under Sir David Clementi, which led to the passing of the Legal Services Act 2007 (LSA), the implementation of which is only now beginning to impact on the shape of law firm risk management, as well as the impending changes which permit external investment in law firms and non-lawyer involvement in the practice of law in areas...
such as litigation and real estate which were previously the preserve of lawyers – through alternative business structures (ABSs). The review also confirmed the need to separate the regulatory side of the Law Society (and other regulators) from the representative function, on which more anon.

**Further developments in 2004**

Hundreds of high street personal injury practices faced large claims by insurers suffering from After the Event litigation remorse – said to be about £70m. The claims were for the costs of actions they said should not have been pursued further and refund of referral fees which were held by the Court of Appeal to be unlawful. These claims tested many firms to the limit, and some beyond the limit. They faced significant exposure from multiple excesses on professional liability policies and from heads of claim for which insurers denied cover; many of these firms had to change insurer subsequently. The litigation was the first big test faced by open market insurers in coordinating multiple claims. Some performed better than others.

2004 was also the year when the application of the conflicts rules hit the headlines with legal and disciplinary action against a major City firm in connection with the hostile bid for Marks and Spencer, probably the highest profile the profession’s conduct rules have had for many years. It also highlighted the unsatisfactory nature of the conflicts rule as then prescribed; the rule was amended in 2006 in advance of other rule changes mentioned below.

Professional conferences on law firm risk management organised by Ark Group and other organisations started emerging in around 2005, which afforded law firm risk partners and managers the opportunity to share ideas and learn from each other, a culture which was already emerging in the field of anti-money laundering and has developed in the ensuing years. In 2006 Ark Group published the first edition of Risk Management in the Legal Profession, by the author; further editions, ever increasing in size, followed in 2007 and 2009.

**The Financial Services Authority**

In 2005 most law firms also sampled their first taste of regulation involving the Financial Services Authority (FSA), albeit through the Law Society, although a small handful – perhaps 50 or so – doing mainstream investment advice were already directly regulated and authorised by the FSA. The FSA began regulating the selling and administration of non-investment insurance contracts – known as insurance mediation activities – as a result of the implementation of the EU Insurance Mediation Directive. This resulted in additional compliance requirements for most law firms, particularly those involved in arranging After the Event insurance for personal injury and other litigation, and policies covering risks such as defective title in conveyancing matters and missing beneficiary policies in probate.

Many firms still fail to recognise their obligations in relation to insurance mediation, which is unwise as breaches may render contractual arrangements unenforceable and result in the commission of criminal offences. The regulatory obligations include a requirement that the firm be on the FSA Register (as an ‘exempt professional firm’) and there have been some examples of firms overlooking this, including one very large firm; the need to re-register was easily overlooked following LLP conversion. Firms were also required to appoint a compliance officer, maintain certain records and provide various notices to clients; however, the duties are not particularly onerous in practice.
From 2005 the sale of mortgages was also subject to FSA regulation, though the impact on law firms has been slight. A more significant, or perhaps one should say expensive, development in relation to FSA regulation and mortgages occurred later on, as we shall see.

**Insurers tighten their grip**

Insurers became concerned about the impact of multiple claims and this resulted in a significant change to the profession’s insurance arrangements in 2005. We have already seen that the requirements for compulsory cover were set out in the Law Society’s MT&Cs. Until September 2005, cover was on an ‘any one claim’ basis, so every claim was covered for the then-prescribed limit of £1m (plus defence costs). The wording was changed from October 2005 with a new, tougher ‘aggregation rule’, so that claims arising from one act or omission in a series of related matters or transactions, or even similar acts or omissions in a series of related matters or transactions, will, arguably at least, be more likely to be regarded as one claim. This was a particular issue for firms doing volume work. At the same time, the compulsory minimum cover increased to £2m for sole practitioners and partnerships and £3m for LLPs and limited companies.

Previously, firms could link their limit of liability to each client in line with their indemnity cover, though were prohibited from limiting liability below the compulsory minimum from time to time. However, if claims from several clients were to be added together with one limit, the individual limits negotiated with them risked being virtually worthless as terms cannot apply across the firm’s whole client base.

**The Solicitors Regulation Authority**

The Solicitors Regulation Authority (SRA) was established by the Law Society of England and Wales in 2006 as a semi-autonomous regulator of solicitors, implementing the separation of regulatory functions from the Law Society’s representative side. Technically it remains a creature of the Law Society with no separate legal existence, and the Law Society remains responsible for regulation under the Solicitors Act 1974 as amended. Similarly, the Legal Complaints Service was established as a semi-independent body to deal with client complaints.

**Further developments in 2006**

2006 saw the largest UK law firm claim yet to go to trial, with much press attention focused on the £142m claim in Football League v edge ellison. The case was defended successfully and decided no great points of law. The claim arose from the solicitors’ alleged failure to advise on bidder solvency, or the desirability of seeking parent company guarantees for the League’s contract with ONdigital for television rights. ONdigital failed when its parent companies withdrew support in a manner unexpected to many. The judge held that in the absence of any express duty, solicitors owe no duty to advise commercially aware clients on the commercial aspects of the transaction. However, many solicitors promote themselves as giving commercial advice – a Google search in 2006 yielded 22,000 hits in the UK alone, whereas now it produces 74,200 hits – so perhaps firms have not reflected on their publicity material in the light of the decision.

In the same year, 2006, solicitor Philip Griffiths was convicted of an offence of failing to report a suspicion of money laundering, but acquitted of money laundering itself. It appears, therefore, that his conviction was for failing to suspect
money laundering when objectively there were reasonable grounds for doing so – reinforcing the need for training.

It was also the year in which the Employment Equality (Age) Regulations 2006 were passed, and in which Mr Peter Bloxham retired as a partner in Freshfields Bruckhaus Deringer. The firm had changed its pension scheme in favour of younger partners and at the expense of older partners, as it was considered that the existing structure of the scheme was creating unfairness to younger partners; when Mr Bloxham retired in October 2006 he was entitled to a much smaller pension pot than he had anticipated and sued the firm for £4.5m, claiming age discrimination. The claim was dismissed by the Employment Tribunal in 2007. It is yet another example of the broadening of the risks which firms have to address, and illustrates the point that risk management is about prevention of loss to the firm of whatever type.

Age discrimination cases continue to beset partnerships, with a claim by Leslie Seldon against his former partners in high street firm Clarkson Wright & Jakes contending that he should not have had to retire as a partner at age 65; at the time of writing, the case awaits a hearing in the Supreme Court.

**Solicitors’ Code of Conduct 2007**

The SRA introduced a new Code of Conduct (‘the Code’) on 1 July 2007. The Code was heralded by the SRA in its annual report for 2006-07 as introducing ‘principles-based regulation’, though few who have had any experience of its subsequent enforcement in practice would accept that that was what ensued. Rule 5 of the Code required partners in law firms to “make arrangements for the effective management of the firm as a whole, and in particular provide for:

(j) financial control of budgets, expenditure and cashflow;
(k) the continuation of the practice of the firm in the event of absences and emergencies, with the minimum interruption to clients’ business; and
(l) the management of risk.”

Guidance note 3, in relation to the Rule 5 requirements for business management, indicates that “arrangements are unlikely to be considered appropriate unless they include a mechanism for periodic review of their effectiveness”.

**The growth of risk management implementation**

Many firms, but by no means all, developed their systems for managing risk, recognising that the task extended to all areas of the business. Risk teams grew. While the author is not aware of any available statistics for 2007, Legal Risk’s Top 100 Law Firm Professional Indemnity and Risk Management Survey 2009 asked firms about the size of their teams for ‘client and matter engagement’ and ‘other risk management’. The average was five for client and matter engagement and three for other risk management, though numbers varied considerably, mainly depending on firm size and international spread. For the top 30, the averages were eight for client and matter engagement and four for other risk management.

Prior to this rule change, little had been required of law firms by way of business continuity in practical terms beyond sole practitioners ensuring they had made a will, but the larger firms were gaining increasing awareness of the need to protect against interruption to the business from whatever cause, fuelled by issues such as the severe acute respiratory syndrome (SARS) epidemic
in the Far East in 2003 and a multitude of relatively mundane incidents such as can affect any business – power failures, triggering of smoke alarms and the like. The largest firms were realising therefore that business continuity, as its name implied, was about more than just disaster recovery. Now the rules of professional conduct require all firms to consider these issues, though it is probably still at a rudimentary level in most firms outside the top 100.

Some firms discovered the hard way that reputational risk issues were also at stake; for example, a number of firms, including some of the largest, were found to have charged clients secret profits on disbursements (particularly fees for bank CHAPS transfers), and disciplinary action followed in many cases resulting in Solicitors Disciplinary Tribunal hearings in some cases and, in others, published reprimands coupled with programmes for repaying clients. In other aspects of professional life, press reports of personal comments about clients being recorded on client relationship management databases caused embarrassment for the overseas office of an international law firm, but overlooked the fact that it is probably far from uncommon.

**Money Laundering Regulations 2007**

2007 also saw the next stage in the development of anti-money laundering compliance with the introduction of the Money Laundering Regulations 2007 (MLR 2007). Key to compliance with the MLR 2007 is the adoption of a ‘risk-sensitive’ approach, which should tie in conveniently with the requirements for risk management in the Solicitors’ Code of Conduct 2007. The requirement to adopt a risk-sensitive approach meant there was no ‘one size fits all’. The writer expressed the view at the time that firms should strive to adopt a cohesive approach to these issues and should not treat anti-money laundering as a standalone issue.

The MLR 2007 increased the focus on ‘customer due diligence’, requiring firms to go beyond a tick box approach to client identification checking and, in the process, performing a far more useful risk management function. They introduced increasing sophistication to the client engagement process and introduced the much wider concept of customer due diligence, including identifying beneficial ownership, in place of identification procedures. They also introduced the need for extended due diligence with the requirement to undertake ongoing monitoring of business relationships. This includes a consideration of issues that arise during the conduct of a matter, such as late introduction of previously unknown beneficial owners, and issues relating to provenance of funds.

While there had been concerns when the MLR 2003 came in that the cost of the compliance would be prohibitive, making the UK legal market uncompetitive, by now the regime had become completely integrated into the client engagement processes for probably the majority of firms.

Combating the financing of terrorism was also moving up the agenda with the requirement on a person to notify the Serious Organised Crime Agency (SOCA) if they know or suspect that another person has committed a terrorist financing offence based on information which came to them in the course of a trade, profession or employment. Terrorist financing can be hard to spot because it does not necessarily involve the proceeds of crime – it can be the proceeds of a legitimate business used for fundraising, and the sums involved may be very small.

**Large claims**

Mention has already been made of one substantial law firm claim, involving
the Football League. The American Bar Association produces reports every four years on professional liability claims. The report published in 2007 revealed an increase in large claims: claims resulting in payments in excess of US$2m had increased to an unprecedented degree since their previous survey in 2003. So too, in the UK, there has been an increase in larger claims in recent years.

Further large claims were reported in the UK. One, for over £100m, was Earl of Malmesbury v Strutt & Parker and Another, a claim for contribution by the defendant surveyors and valuers in relation to the failure to include provision for turnover rent on the lease of land forming the Bournemouth airport car park, which increased in usage considerably after it was let. The judge accepted that the surveyors were giving commercial advice and the lawyers only legal advice. Note that the judge commented, “I would accept that a situation could have arisen in which it became the duty of [the solicitor] to question commercial advice given by [the surveyor] because it was obviously wrong. But that did not arise.”

Claims against European firms have been comparatively rare, though the situation is changing. In Ocean Rig v Wikborg Rein & Co., in February 2006 the Oslo District Court found in favour of Ocean Rig and awarded NOK 101,584,500 (approximately £8.6m) plus interest and costs against a Norwegian law firm.

The claim arose from the drafting of an international contract between the Norwegian rig owner and a Brazilian contractor, Maritima. Maritima was to secure contracts for some rigs, and the contract provided that Maritima would pay Ocean Rig US$15m if it did not succeed. No contracts were secured and Ocean Rig claimed the US$15m but lost an arbitration in England. The clause was a penalty clause and the claimant was unable to recover US$15 million as it could not prove actual loss. The appeal of Wikborg Rein & Co. was allowed on 5 July 2007.

Impact of the recession
The years that followed included a severe recession which gave a whole new impetus to risk management. Some of the largest UK banks teetered on the brink of collapse (and some banks elsewhere did fail, such as DSB Bank in the Netherlands in October 2009), and law firms became concerned about their potential liability to clients if they held money in a client account at a bank which collapsed. Equally, insurers of law firms became concerned that losses of this type might be within the scope of insurance cover and steps were taken to revise policy wordings so as to exclude cover for such claims.

Other areas of recession-related risk included the fallout from work done for banks and other lenders. Many firms face claims for allegedly failing in their duties to lender clients, and this in turn has put pressure on their insurers, in turn making significant numbers of firms uninsurable in the commercial market.

A more direct consequence of the recession, however, has been the failure of many law firms as businesses. While Halliwell LLP, a top 50 UK firm with turnover around £80m, attracted most of the publicity, very many smaller firms have fallen by the wayside too. Most recently, major US firm Howrey LLP has been dissolved.

Whether incorporation as an LLP has in fact provided partners with real protection in the doomsday scenario remains to be seen. There are many areas where in practice partners may have personal liability.
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such as guarantees on leases, loans for partnership capital, professional indemnity premiums and excesses – and they rarely escape unscathed. Their exposure may be reduced but, if it is still for an amount they cannot afford to lose, the benefits of limited liability may be more apparent than real.

Legal Services Act 2007
From 31 March 2009, provisions in the Administration of Justice Act 1985, the LSA 2007 and amendments to the Solicitors’ Code of Conduct came into force to permit a new type of law firm, the legal disciplinary practice (LDP), and to bring into effect ‘firm based regulation’ whereby all legal practices, regardless of size, are regulated as a firm or ‘recognised body’. The term ‘principal’ in the Code of Conduct and other legislative documents was replaced by ‘manager’.

The changes enabled firms to appoint non-solicitor lawyers and non-lawyer managers with ownership or control up to a limit of 25 per cent, and provided the SRA and the Solicitors Disciplinary Tribunal with new powers to impose sanctions on practices, and in relation to non-solicitor managers and employees.

More large claims
2010 saw further large, litigated claims. Haugesund Kommune v Depfa and Wikborg Rein (No. 2) resulted in an award of £28m, but this was overturned on appeal. The claim was brought in London due to a contractual jurisdiction clause, but the parties were Norwegian municipalities, an Irish lender and a leading Norwegian law firm.

Levicom v Linklaters involved a £37m claim which attracted much publicity but decided little beyond the facts. This was followed in 2011 by an unsuccessful £60m claim in D Morgan v Mace & Jones and more recently by a £7.65m award of damages in Amalgamated Metal Corporation v Wragge & Co.

More regulation
Another aspect of FSA regulation impacted on some law firms in 2010: solicitors involved with mortgage repossessions were put to the significant expense of installing telephone recording equipment in accordance with the FSA’s Mortgage Arrears Instrument 2010. The rules also contain provision as to information which must be provided to lenders’ customers. So once again, while most law firms are not directly regulated by the FSA, they cannot ignore it.

On 6 October 2010 responsibility for handling complaints against all lawyers, not just those regulated by the SRA, was transferred to the wholly independent Legal Ombudsman Scheme established by the LSA 2007. There is some concern that this will expose firms to significant risk as experience in the financial services sector shows that an Ombudsman may award redress where he considers it fair and reasonable, even where on established authority a court would hold that it was not fair and reasonable to do so.

Events in Egypt and Libya have resulted in the imposition of international financial sanctions. These are an often overlooked part of the anti-money laundering regime, but with press reports that the Libyan regime is said to have around £20bn in liquid assets, mostly in London, there is no margin for error. With criminal sanctions for non-compliance, this again reinforces the need for law firms to be aware of events taking place outside their own offices.

The future
The final stage in this review is the introduction in 2011 by the SRA of a new
regulatory framework, known as ‘outcomes-focused regulation’ (OFR).

The practice of law in England and Wales will, on 6 October 2011, almost certainly become the most heavily regulated in the world. On the same day, it will also become subject to competition from outsiders, the impact of which, great or small, will only unfold with the passage of time. The positive spin of ABSs increasing consumer choice may turn out to be far from reality when large players focus on a few profitable practice areas which they can tie into the sale of other lucrative products, particularly insurance and pensions, leaving an unmet need in other areas.

The SRA published its draft Handbook on 6 April 2011, including a new Code of Conduct. They are timed to come into force at the same time as the LSA 2007 permits external investment in law firms and non-lawyer involvement in ‘reserved activities’.

Instead of a detailed rulebook with a box-ticking approach to compliance, the intention is that the implementation of OFR is through rules that set out mandatory outcomes which firms are not only required to achieve, but to demonstrate that they are achieving them. ‘Indicative behaviours’ help determine compliance with the outcomes. Regulatory compliance is effectively being devolved to the law firms themselves, but they will be supervised in this by the SRA.

The Introduction to the draft Code of Conduct states: “Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect clients and the public. The SRA Code of Conduct (the Code) sets out our outcomes-focused conduct requirements so that you can consider how best to achieve the right outcomes for your clients taking into account the way that your firm works and its client base. The Code is underpinned by effective, risk-based supervision and enforcement.”

A report in The Lawyer on 11 April 2011 said: “…The terms of the Legal Services Act give the regulator stronger powers to discipline firms, and [the SRA’s chief executive, Antony] Townsend insists that it will be using these. ‘We’ll be publishing a lot more than we used to,’ he adds. ‘We have the power to reprimand firms publicly and fine them up to £2,000.’

The Law Society’s summary of the consultation explains that by 6 October 2011 the SRA hopes to:

- Put in place a new outcomes-focused Code of Conduct as part of a handbook of all regulatory requirements;
- Regulate using a risk-based and outcomes-focused approach; and
- Have begun licensing ABSs, Parliamentary time permitting.

The SRA plans to shift the supervisory emphasis towards assessing a firm’s risk management systems and identifying whether they are achieving the outcomes rather than a detailed consideration of a firm’s processes. The level of supervision a firm will experience will depend on the perceived risk that it poses to the regulatory objectives. Supervision will also be tailored to take account of factors such as firm size and risk management systems, as well as the firm’s previous compliance history and positive engagement with the SRA. The SRA’s vision is to:

- Concentrate on dealing with firms which pose serious risk;
- Encourage firms to assess and tackle the risks themselves; and
- Concentrate on those which cannot – or will not – put things right.
The SRA launched its consultation on the new rules under the strapline ‘Freedom in Practice’, but this should be treated with caution: it means there may be more than one way to comply with a requirement but, as we shall see in the following chapters, it does not mean lawyers have freedom from the consequences of what they do. The words of George Bernard Shaw have a certain resonance: “Liberty means responsibility. That is why most men dread it.”

At the heart of the new regime is a focus on client service and business management. The SRA’s concern about firms’ business management arises in part from the failure of many firms, intervention in which puts a heavy cost on the profession. Underpinning the new Handbook are ten Principles. In particular, Principle 8 provides that you must “run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles”.

Chapter 7 of the draft SRA Code of Conduct addresses ‘management of your business’ and develops the risk management requirements which were established by Rule 5 of the current Code as mentioned above. Further discussion of this provision is covered in the following chapters.

One final intrusion from FSA regulation will arise with the introduction of ABSs. Solicitors’ firms which are dual-regulated by the FSA and SRA (‘authorised professional firms’ or APFs) enjoy exemption from some of the more onerous FSA requirements relating to contributions to the Financial Services Compensation Scheme, and the capital adequacy requirements. These advantages will not apply to ABSs. Those firms which have taken advantage of interim provisions in the LSA, allowing them to admit up to 25 per cent non-lawyer owners and become LDPs, will be required to convert to ABSs and therefore lose the exemptions which they currently enjoy. It emphasises the need to be aware of what is happening in other spheres of professional life beyond regulation by the SRA.

2011 sees the implementation of the Bribery Act 2010. While the impact on law firms will generally be less than on some of their clients, particularly those in sectors such as construction and energy, it is another illustration of how risk presents opportunities as well as threats, as many firms will generate revenue from advice to clients while at the same time having to manage their own risk. For most firms, it will be integrated into their anti-money laundering training and systems, which may focus on client activity, but they should not overlook risks in their own business. Much attention has focused on excessive hospitality, which is probably a low frequency risk for law firms generally, but they should not overlook other areas such as procurement fraud within their own organisation.

Risk management teams can all too readily be perceived as the ‘business prevention department’, and a burdensome overhead. The practical problem is that the more effective their risk management, the less their stakeholders will perceive they have to show for it.

The task can be made harder when management are confronted with people who are over-confident in their own abilities and believe risk management does not apply to them. As Captain E J Smith, later the captain of the Titanic, said in 1907, “...in all my experience, I have never been in any accident … of any sort worth speaking about. I have seen but one vessel in distress in all my years at sea. I never saw a wreck and have never been wrecked nor was ever in any predicament that threatened to end in disaster of any sort.” The Titanic sank in 1912.
Nassim Nicholas Taleb, in The Black Swan: The Impact of the Highly Improbable\textsuperscript{25}, observes that everybody knows that you need more prevention than treatment, but few reward acts of prevention. So firms may reward the partner who brings in a new major corporate client – then find it is the next Enron, or a Russian oligarch with funds of doubtful provenance.

The comment “If you think risk management is expensive, try an accident”, is attributed to Stelios Haji-Ioannou, founder of the easyJet budget airline, but applies equally to professional risk and the losses that flow from failure to manage professional risk.

The focus of this report is on professional and operational risk. The Basel Accord defines operational risk as “the risk of direct or indirect loss resulting from inadequate or failed internal processes, people, and systems or from external events”.\textsuperscript{26}

As the practice of law continues its transition to one of business, it is perhaps of passing interest that the definition of ‘profession’ in the Concise Oxford English Dictionary\textsuperscript{27} in 1990 was “a vocation or calling, esp. one that involves some branch of advanced learning”. In the current edition it is “a paid occupation, especially one involving prolonged training and a formal qualification”.

Notes and references

6. [2006] 1462 (Ch).
8. The Clearing house Automated Payment System.
africaandindianocean/libya/8346701/Libya-Gaddafis-billions-to-be-seized-by-Britain.html.

22. For convenience, all references to ‘the Handbook’, ‘the Code of Conduct’ and ‘the Accounts Rules’ throughout this report refer, unless otherwise stated, to the Solicitors Regulation Authority draft Handbook, see http://www.sra.org.uk/handbook/.


24. See the SRA’s ‘Outcomes-focused Regulation: Roadshow Presentation’, www.sra.org.uk.

