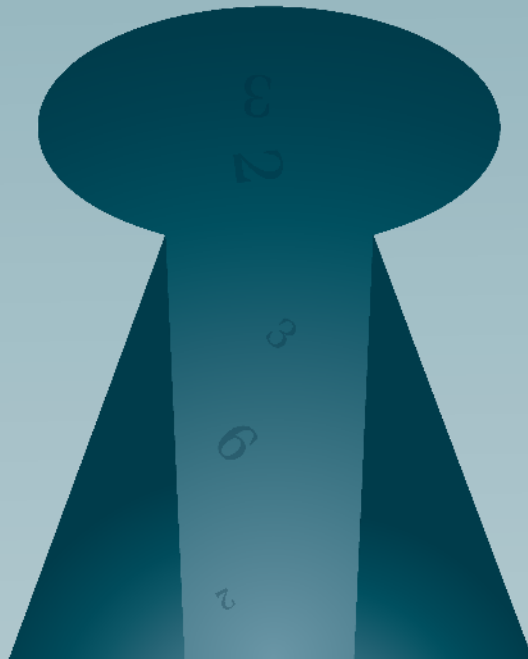


SUPPLEMENT  
DECEMBER 2018/JANUARY 2019

# LPM

LEGAL PRACTICE MANAGEMENT



## WON THE RISK?

*Where do SME law firms have most work to do in the realm of risk management?*

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# Compliance behaviour

What's on the risk platter for SME law firms and how can they best stay out of trouble? Richard Parnham reports

The past few months have not been easy for law firms' risk management and compliance professionals. Updated money laundering rules, GDPR, Brexit, cyber risks, yet another rewrite of the SRA handbook – these are just some of the issues that have been keeping these dedicated bands of professionals busy.

With so many potential threats to keep on top of, how can law firms – especially SMEs – prioritise which areas to focus their efforts on? Here, one option might be to use the SRA's Risk Outlook, which, each year, offers the regulators' view on what it regards as 10 priority risks.

Certainly, some compliance specialists say they find the Outlook helpful, and use it as the starting point for their firm's periodic risk reviews. "It's a good document," says Barry Davies, practice director and compliance officer for finance and administration (COFA) at Douglas-Jones Mercer.

Others, though, have a less positive view of this document. Richard Nelson, founder of Richard Nelson Solicitors, speaks for many practitioners when he says: "When the SRA talks about risk, it doesn't talk about common or garden risks, which are so key to a practice. You have to get the work in, and do it properly. And you have to make a profit. The business element is a huge risk factor,

and one that is often overlooked."

In truth, this complaint is arguably valid, at least to a certain extent. Several of the key risks that the SRA identifies are very much top-level justice sector challenges, such as access to legal services and diversity, rather than the bread-and-butter issues that typically feature highly on law firms' own risk registers. "In fairness to the SRA, it's trying to cover the risks to 11,000 law firms and 130,000+ solicitors in just one document," observes Adam Entwistle, partner and head of compliance at JMW.

## CYBER WITH RELIEF

Although there are significant differences between what the SRA regards as being key risks and those identified by law firms themselves, there is one danger that both sides agree on: cyber risk. In recent years, DLA Piper's global tribulations at the hands of the Petya malware made headlines around the world. And, closer to home, research undertaken by the SRA suggests that more than £20m of client money has been stolen from law firms due to cybercrime within the past two years alone. With SRA-reported cyberattacks reaching a record 157 incidences in 2017, this risk to the legal sector is real and growing.





So, how are firms responding to this growing danger? Many are investing in technology solutions, which can actively guard against known risks such as network penetration and email spoofing. But a key element of many practices' risk-reduction activities focuses on the human element, often known as Picnic - 'problem in chair, not in computer.' For example, Michelle Rosen, partner and compliance officer at Brightstone Law, says her firm has reformed its client onboarding and ongoing engagement processes, with the specific aim of ensuring it doesn't inadvertently send client money to criminals.

"I made it a mandatory policy that clients have to produce a certified copy of their bank statement, which includes their account details," she says. "Then, in their letter of engagement, clients also have to submit their bank details and sign it."

The firm also instituted a blanket ban on accepting changes to bank account details via email, Rosen adds. Safeguards such as these, she says, "can be implemented very simply, but give you quite significant extra protection."

In addition to this type of ad hoc protection, a small - but respectable - number of law firms have now obtained Cyber Essentials accreditation, with a view to reducing their risk of a cyber-attack. Launched in 2014, this government-backed accreditation scheme comes in two flavours, Cyber Essentials and Cyber Essentials Plus. Cyber Essentials is essentially a questionnaire-based self-certification option to be validated by an external provider, which costs in the region of £300.

By contrast, Cyber Essentials Plus also requires a security assessment to be carried out by a recognised cybersecurity professional, and costs around £1,900 to obtain. Helpfully, some bodies that oversee Cyber Essentials also offer free cyber insurance - worth tens of thousands of pounds - to any firms that sign up to the scheme via their accreditation process.

## INSURANCE ASSURANCE

Certainly, cyber risk insurance policies are becoming increasingly popular among SME law firms - not least because they typically offer

**“** Some insurance policies could be worth it for the helpline support alone. In an attack, most law firms would really panic, and not know who to call. **”**

Adam Entwistle, partner and head of compliance, JMW

access to a 24-hour support helpline. "Some insurance policies could be worth it for the helpline support alone," says Entwistle at JMW. "In an attack, most law firms would really panic, and not know who to call."

But cyber insurance is not the only option available to firms that want to mitigate against risks associated with a cyberattack. If the scope of a firm's cyber insurance policy is limited, a separate business-interruption insurance may also be useful, because it can help tide the practice over financially while its IT systems are being restored.

Similarly, if a cyber risk policy does not cover the cost of a subsequent regulatory investigation, protection against this expense can be provided for via a directors' and officers' insurance policy. Some firms also take out crime compensation policies, which they can draw on if they are the victims of various law breaking incidents.

Of course, every time a firm takes out an additional insurance policy for a specific purpose, it increases the possibility of an overlap between policies - which may cause conflict between insurance providers should a claim be made. Worse, a multi-pronged approach to insurance cover may leave specific dangers uninsured, if that danger falls between different policies.

### LPM FIRM FACTS

**Aaron & Partners**

**Revenue: £9.81m**

**Corporate status: LLP**

**60 fee earners,  
130 total staff**

**Office locations: Chester,  
Shrewsbury, Manchester**

### LPM FIRM FACTS

**Douglas-Jones Mercer**

**Revenue: £4m**

**Corporate status: Limited  
company**

**33 fee earners,  
55 total staff**

**Office locations: Cardiff,  
Mumbles, Porthcawl,  
Swansea**

### LPM FIRM FACTS

**Stephensons Solicitors**

**Revenue: £19.66m**

**Corporate status: LLP**

**105 fee earners,  
420 total staff**

**Office locations: Bolton,  
Leigh, London, Manchester,  
St Helens, Warrington,  
Wigan**



To avoid precisely this outcome, Ann Harrison, chairwoman and COLP at Wigan-based Stephenson Solicitors, says her firm is currently doing a review, looking at all of its different policies, to make sure there aren't any gaps. Other COLPs spoken to for this report say they are also undertaking similar reviews.

On a related point, Linda Lee, a solicitors' regulation specialist at RadcliffesLeBrasseur, has some useful advice for anyone who opts to use a single vendor for all of their insurance needs, with a view to avoiding coverage gaps. "Do not confuse using the same insurance broker with using the same insurance provider," she recommends. "Sometimes, people merge these two together. If you're just using the same insurance broker, that's not really going to help."

### CONVEYANCING COMPLIANCE

In terms of practice area risks, one type of work above all others continues to trouble risk and compliance specialists at SME law firms – property transactions and, in particular, residential property transactions. In terms of revenues, this type of work may only contribute a small percentage to the firm's bottom line. However, in terms of compliance and potential liability challenges, property law represents a veritable honeypot of risk. These dangers not only include cyber fraud, but also vendor identity fraud – where a property is 'sold' by someone who does not own it – and ever-increasing anti-money laundering obligations, including those relating to unexplained wealth.

Unfortunately, compliance officers' workloads in relation to money laundering are likely to increase in the near future, according to some who monitor this issue closely. "Under the new money laundering regulations, there's now a new oversight body, which the SRA has to report to," observes JMW's Entwistle. "And because the SRA is now being supervised in relation to its money-

**“** Following the previous SRA reforms, we now have everything in place – and we're probably going to have to change everything again. It typically takes several years for firms to get their heads around what the SRA is trying to achieve. **”**

Michelle Rosen, partner and compliance officer, Brightstone Law

laundering compliance activities, it's now going to be putting us as a profession under increased scrutiny, and asking more questions.

"To be honest, I think that's a good thing. As the SRA hasn't been an active money-laundering regulator until recently, I think that many lawyers continue to struggle with this issue."

That is also an impression given by Paul Bennett, partner at Aaron & Partners, who specialises in advising law firm compliance professionals. "Everyone I speak to is discharging their duties to the best of their abilities – but they still have questions in their own minds about whether they're doing enough," he says.

### GDPR WE DONE YET?

Arguably, one danger that appears to have dropped down many compliance officers' risk

#### LPM FIRM FACTS

**JMW**

**Revenue: £32.03m**

**Corporate status: LLP**

**350 fee earners,  
500 total staff**

**Office locations: Liverpool,  
Manchester**

#### LPM FIRM FACTS

**Richard Nelson**

**Revenue: Undisclosed**

**Corporate status: LLP**

**11 fee earners,  
41 total staff**

**Office locations: London,  
Nottingham, Cardiff, Bristol,  
Birmingham, Manchester,  
Leeds**



registers in recent months is the GDPR. After several months of intense preparation ahead of the new regulation coming into effect, and a small flurry of disclosure requests afterwards, this issue has now entered a compliance ‘tick over’ phase – something that is routine, rather than an area of extreme focus. That said, several COLPs said they were, in the words of Douglas-Jones Mercer’s Barry Davies, “sitting with bated breath, waiting for the first law firm to receive a hefty fine.”

On a related theme, a new EU ePrivacy Regulation is currently coming down the tracks, assuming the UK continues to abide by EU laws post-Brexit. “That is something that firms that do a lot of digital marketing are going to have to navigate,” says JMW’s Entwistle.

### RULEBOOK REVIEW

In terms of solicitor-specific regulations, the SRA’s forthcoming rulebook change is causing headaches among many law firm compliance specialists. Many of these concerns relate to the sheer effort of drawing up internal compliance regimes that match the SRA’s new expectations.

“Following the previous SRA reforms, we now have everything in place – and we’re probably going to have to change everything again,” says Rosen at Brightstone Law. “It typically takes several years for firms to get their heads around what the SRA is trying to achieve and what they need us to do.”

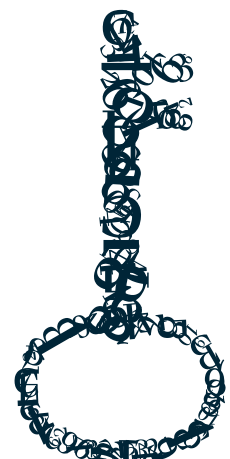
Other concerns arising from the new regime that the SRA is now promoting include measures to allow solicitors to retain their professional title while working for unregulated entities. “This issue

has gone flying to the top of the pile as far as I am concerned,” says Davies at DJM. “There are going to be people coming into the market who are more entrepreneurial than law firms have been so far.”

Among the forthcoming SRA reforms, one of the most hotly-debated issues is the new requirement that law firms should offer clients greater costs transparency, by displaying their prices on their websites for specific types of work. Some who have studied this reform closely say, in reality, it is not particularly complicated to understand, nor burdensome to implement. Bennett at Aaron & Partners says he even recently declined to give a one-hour webinar on the subject “because there’s not enough to talk about.” Instead, he released a podcast lasting just 20 minutes.

Arguably, the greatest risk regarding this specific SRA rule change is that it will lead to greater competition for work, based around price, suggests Entwistle. “Most people think it’s inevitable that you’re going to get price comparison websites, especially for practice areas such as conveyancing,” he says. “That’s quite a cultural departure.”

However, the challenges arising from the latest rulebook review arguably illustrate a deep irony regarding the regulator’s annual risk outlook: some of the most significant risks that law firm risk offices are now grappling with relate to the commercial risks the SRA is actively creating. Cynics may wonder if the day will ever arrive when a future SRA risk outlook identifies ‘the SRA’ as a key risk challenge for the period to come. **LPM**





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Leeds, LS1 2HQ





# Risk or reinvention?

Jonathan Whittle, market development director, LexisNexis, reviews whether changes facing the legal profession are forcing some changes to firms' risk management beliefs

For many in the legal industry, what comes to mind when we talk about risk could be anything from regulations and personal indemnity insurance to handling client funds. While those are all legitimate concerns, there is an increasing number of additional risks that are subtly creeping up on practitioners, and slowly but surely changing the legal landscape.

Although solicitors typically keep a weather eye on regulatory changes, for example, that may not be enough in the current environment. The challenges posed by the changes coming into force may require them to take a more vigilant stance than simply being aware. The Solicitors Regulation Authority's recent Price and Service Transparency Rules and Looking to the Future reforms are just two that have the potential not only to usher in an age of upheaval for solicitors, but potentially reinvent the way law firms operate.

With such a cocktail of concerns and changes, not to mention ongoing compliance issues and the rise of consumerist culture, it's understandable that many operating in the legal profession are despondent.

However, there are things that can be done to improve the situation. Over the past few years, we've heard reports of how technological advancements and automation are positively changing the way law firms work. Even though uptake to date has been slow, the signs are encouraging.

Our own research – Is your tech Smart? – revealed that 75% of firms whose profits have increased over the last three years have also increased their tech investment over the period. Tools such as CRM, matter management, research and guidance and automation tools are popular

with firms owing to their benefits for staff and clients, as well as their ability to help mitigate risk. With this in mind, we took a deeper look at the risks facing law firms and how advancements in technology can help.

## A NEW WAY OF WORKING

With the SRA Price and Service Transparency Rules (coming into effect in December 2018) affecting some practitioners, depending on the work they do, and the requirement to publish your complaints-handling procedure and ensure that your regulatory status is prominently displayed, it's clear to see that the regulatory burden is increasing heavily for law firms.

Furthermore, the Legal Services Board has just approved the SRA's application for its Looking to the Future rule change, permitting solicitors to provide unreserved legal services from unregulated firms.

The changes could mark a significant shift in the way legal services are obtained, the practice of law, and how law firms operate. According to the research from our Bellwether Report 2018, the majority of solicitors see the current situation as one laden with risk. Some 70% believe that the new changes could compromise the ability of firms to compete effectively with solicitors working outside of regulated law firms, while a further 65% believe that the proposals (put forward at the time) will increase competition. Indeed, almost 70% of respondents said that it will lower standards across the legal market as a whole.

So, what measures could you take to safeguard your firm, staff and clients? In order to cope with a changing regulatory landscape, especially one of this magnitude, firms will need to be agile and

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“ Solicitors need to be able to step out from the crowd and offer unique insights and analysis in order to meet the increasing expectations of a more critical – and, crucially, more informed – client base. ”

adapt. However, our research reveals that law firms have become ingrained with traditional practices. Nevertheless, the SRA changes are the perfect opportunity to challenge yourself and your law firm and think about how things could be done differently. Legal online tools like LexisPSL Practice Compliance and Management will keep you up to date with changes, as well as providing you with the guidance you need to tackle them with minimum impact.

Now more than ever, law firms need to safeguard themselves – and their futures. Make sure you're on the winning track by employing the right tools, with the right attitude, and these potential risks could reveal themselves to be an opportunity.

### THE CONSTANT COMPLIANCE HEADACHE

Even without the impending upheaval from the new SRA changes, everyday compliance is still a formidable prospect for firms, with 81% of solicitors asserting it's a significant challenge facing independent law firms today. The cost of compliance – both time and money – is continuously increasing, leading many in the industry to feel like they are being set up to fail.

But the clock is ticking. With the new SRA Handbook coming into play in 2019, the sheer heft of the compliance burden seems like an unwelcome distraction (albeit an important one) for practitioners. As many legal professionals will agree, the SRA does seem to be trying to put the client first with regard to getting access to legal

services and giving them the best options when instructing a law firm. The pressure is on law firms now more than ever to deliver good-quality service at the right price.

However, with the spectre of consumerist culture quickly making itself felt in the legal profession, how do you ensure you maintain regulatory compliance and minimise the risk to your law firm? There are many compliance solutions in the market that can help, from consultants to courses, but with changes coming thick and fast, is it enough? An online compliance toolkit such as LexisPSL Practice Compliance would provide you with the full protection you need, keeping you fully compliant and ahead of the fast pace of change.

### CHANGING CLIENT DEMANDS (THANKS, GOOGLE)

With consumerist behaviours becoming more apparent in the industry, it's understandable that many practitioners are wondering whether clients can actually be a risk to law firms. In fact, they can. Clients are shopping around for the best deal generally, across all industries – not just the legal profession. Clients are much more informed today, thanks to online search tools like Google and the increase in 'self-help' forums and guides informing and emboldening them when it comes to their rights. Solicitors need to be able to step out from the crowd and offer unique insights and analysis in order to meet the increasing expectations of a more critical – and, crucially, more informed – client base.

Indeed, the impact on clients can already be felt. Our 2018 Bellwether research revealed that 58% of respondents believe client demands are impacting their ability to uphold the integrity of the law, with a further 26% of those surveyed attributing this to “reducing cost at the expense of quality”.

However, an incredible 97% of the solicitors we spoke with feel that having a “client-first” culture is important to their law firm. If that’s truly the case, taking the needs of clients into account must be top priority. With the SRA reporting that 27% of clients compare legal providers, law firms should start to look seriously at how they work with clients going forward, especially as maintaining client loyalty and attracting new business remains one of the greatest concerns for law firms in today’s market.

Furthermore, it’s important to take client values into account. Rather than assigning value to quality advocacy, clients are increasingly focused on expediency of service. It’s vital, therefore, that firms differentiate themselves by their ability to satisfy client need for quality and quantity. Clients also value outcomes, making it essential that solicitors have access to the best legal resources in order to resolve client queries and cases.

Research and guidance tools like LexisPSL are invaluable. A cloud-based legal research software tool, this has been developed to help legal professionals to obtain quick, accurate answers to specific issues of law, reducing research time and keeping them up to date with the latest developments. With links to authoritative sources in LexisLibrary, it will ensure you’ve got all sides of your argument covered.

## THE COSTLY MISTAKES

With clients demanding more, solicitors working faster and becoming more outcome-focused, and with many outsourcing work to junior members of the firm, the risk of mistakes is increasing hugely – while burdens are only increasing. Two-thirds of respondents that we spoke with while researching for our *Is Your Tech Smart?* report revealed that they are ‘anticipating growth’, thereby adding to the pressure to get more done in less time.

As demands rise and time is in short supply, it’s essential that law firms employ smart technologies to help shoulder the burden of legal work, drive efficiencies and mitigate risk. Document automation tools can make a world of difference to firms looking to improve productivity. Indeed, 63% of the 2017 Bellwether report respondents assert that drafting and proofreading tools contribute to efficient working practices.

A document automation tool like LexisDraft can really help with productivity and mitigate risk. This is a Microsoft Word toolbar that helps lawyers draft faster and more efficiently. It checks for inconsistencies in documents and flags areas that need your attention. Such tools safeguard

## RISK IN BRIEF

**Y**ou know the risks. How do you make a case for investing in technology at your firm?

When it comes to developing a case for investing in technology, you need to ensure you present a structured brief and evidence-based case that answers the following:

- 1 What do I want to change? (What is the problem you want to solve?).
- 2 What will technology do to improve how we currently do things?
- 3 What are the risks?
- 4 What is needed to make it work?
- 5 How do I make success measurable?

By focusing on these five central enquiries, your investment case will allow decision makers to procure meaningful buy in from colleagues and ensure that any new technology will resolve the problems specified in consultation meetings.

Download the full Bellwether and *Is your tech smart?* reports here: [www.lexisnexis.co.uk/businessoflaw](http://www.lexisnexis.co.uk/businessoflaw).

“ *The sheer amount of risk can feel overwhelming. However, there are steps that firms can put in place to protect themselves, serve their clients and not only weather the changes coming down the pipeline, but also get ahead of them.* ”

quality and quantity of output, offering valuable efficiency savings without risking legal value.

## STRAIN TRAIN

The increase in the regulatory burden facing law firms, as well as growing demands from a more informed, tech-savvy client base, are putting significant strain on legal professionals working in today’s rapidly changing legal market. The sheer amount of risk can feel overwhelming. However, there are steps that firms can put in place to protect themselves, serve their clients and not only weather the changes coming down the pipeline, but also get ahead of them and stand out from the crowd – an important consideration considering the focus clients, and the SRA, are putting on shopping around.

But investment in technology needs to be smart in itself. You need to look at the bigger picture, at the wider environment, as well as stay focused on the specific issues at your firm. Smart investment in technology and tools, such as LexisPSL Practice Compliance and Lexis Draft, will be vital components in your arsenal moving forward. **LPM**

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