

Risk Outlook

Autumn update 2018

In July 2018, we published our sixth annual Risk Outlook. Throughout the year we gather and analyse information about each risk and look for emerging trends. This update reflects what we are seeing in the market to help law firms manage risk in their business.

We have updated our Priority Risks and this is an at-a-glance version of the updates. We will continue to update these throughout the year with new information. Our seventh annual Risk Outlook will be published in summer 2019.

Open all [#]

Access to legal services

Many people and small businesses do not use a solicitor or barrister for their legal needs. Unresolved legal problems can lead to financial and lifestyle costs. The affordability of services and lack of information, especially about prices and services, are the two main barriers to accessing legal services. Our recent independent research [[/sra/how-we-work/reports/price-transparency/](#)] found that over 60% of small business owners and managers think that cost stops them from using a solicitor. Our research and the LSB's research [<https://legalservicesboard.org.uk/>] found that small businesses are more likely to use a solicitor when prices are visible online

The Legal Services Consumer Panel [<https://legalservicesboard.org.uk/>] found that legal services delivered by email or online had increased from 21% in 2012 to 30% in 2018 [<https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports/>]. And services delivered by post had halved, to 8% in 2018. Face-to-face services have remained stable over the past three years and are currently used by 46% of people. There is a steady increase in unbundled legal services where people and businesses ask solicitors to help them with part of the work.

Our guidance [[/solicitors/guidance/transparency-in-price-and-service/](#)] helps the firms who have to publish information on prices and services under Rule 1 of our Transparency Rules [[/globalassets/documents/sra/consultations/better-information-post-consultation-rules.pdf?version=4a1ac1](#)] to understand their obligations. It also gives wider best practice advice and example templates [[/solicitors/guidance/transparency-in-price-and-service/##templates](#)].

The Regulators' Pioneers Fund has awarded us nearly £700,000 to improve access to the legal services market for people and small businesses by supporting business innovations using artificial intelligence. We will be working with Nesta to make funding contributions to organisations with ideas that will bring real benefit to people who need legal help.

Cyber security

There has been a continuing increase in the number of reports of cybercrime to us. It has risen by 10% for the first half of 2018 compared to the same period in 2017. Many of the reports show that firms have stopped client money being stolen by having appropriate defences, such as up to date systems and training their staff to recognise suspicious activities. The Law Society's review of professional indemnity insurance claims [<https://www.lawsociety.org.uk/support-services/risk-compliance/pii/surveys/>] also shows that most attempted cybercrimes do fail, though the consequences of successful attacks remain very serious.

Email modification fraud accounted for 80% of all cybercrime reports to the SRA in the second quarter of 2018. The large sums of money involved means that conveyancing will

always be a target for this type of cybercrime. However, more than half of email modification fraud now relates to other areas of work. This suggests that criminals are shifting to a wider range of targets as conveyancers are now more aware of the threat.

Firms should not let any unused internet domain names expire, for example when they merge, close or change brand. A criminal who falsely re-registers the old name can potentially get access to email histories including client confidential material, bank correspondence and the information needed to reset passwords. It also makes it easier to hold themselves out as a solicitor. Keeping control of obsolete domain names is an inexpensive way to prevent this fraud.

We want firms to be clear on what, and when, they should report concerns to us over issues that may lead to regulatory action. We have consulted on giving clarity around these practical decisions. The Reporting Concerns [[/sra/consultations/consultation-listing/reporting-concerns/](#)] consultation responses are being analysed and we will share our findings shortly.

Diversity in the profession

The legal profession is changing and starting to reflect the diversity of wider society. To further improve equality, diversity and inclusion there are a range of initiatives that firms can get involved with. And firms can check that their recruitment processes allow the best talent from all groups of people to be employed. Mentoring schemes that support people from diverse backgrounds will also help to promote diversity at all levels in firms.

We held an event for Black History Month where panel members highlighted the benefits of mentoring to improve diversity for black, Asian and ethnic minority diversity.

We promote good practice in equality and diversity in our own work, which is detailed in our fourth annual Workforce progress [[/sra/equality-diversity/archive/annual-diversity-report-2017/](#)] report. We have a range of staff networks that help our staff, work with relevant external groups and support our involvement with professional and community events, such as Pride and the UK Diversity Legal Awards [<http://diversitylegalawards.org/>].

Information security

There were 512 concerns reported to us about breaches of confidentiality in 2017. And a further 408 reports about breaches of confidentiality in the first three quarters of 2018. This shows an increasing trend compared to the same period in 2017. Most of the information security breaches reported to the Information Commissioner's Office for all sectors are:

- confidential emails, faxes and letters being sent to the wrong person
- lost or stolen paperwork.

Solicitors have always needed to work on the move, and remote and home working are becoming more common. It is important that solicitors take care to keep information safe while outside the safety of a secure office.

Integrity and ethics

We received 2,090 reports about concerns of solicitors acting without integrity or ethics in 2017, and 1,350 in the first three quarters of 2018. Although these reports have reduced this year, any evidence of a solicitor acting without integrity is serious.

HM Revenue & Customs (HMRC) is imposing a penalty on the enablers of tax avoidance schemes where they defeat a scheme that has abused the tax law. Enablers include solicitors advising on schemes and those that create companies or trusts for schemes. When a

company has had 50 or more penalties or has received a penalty over £25,000, HMRC can publish their details. HMRC has produced a fact sheet

[<https://www.gov.uk/government/publications/compliance-checks-penalties-for-enablers-of-defeated-tax-avoidance-cfts43>] on the penalties that it can apply to enablers of tax schemes that it defeats.

Our updated paper, Balancing duties in litigation [[/risk/risk-resources/balancing-duties-litigation/](#)] includes warnings about using non-disclosure agreements to take unfair advantage of someone or to conceal criminal activity. We have received and are investigating more than 50 reports about allegations of harassment by solicitors. We will take action where needed.

We take inappropriate behaviour in the workplace very seriously. We have asked the largest firms that we regulate about how they prevent, and respond to allegations of, sexual harassment in the workplace. We have asked them to tell us about their training for staff and how they support a person making an allegation of sexual harassment. We are reviewing their responses and we will share examples of good and poor practice.

We are working with the Equality and Human Rights Commission and other legal regulators about what more we can do to promote awareness and encourage good practice among law firms to tackle sexual harassment.

Investment schemes

Dubious and fraudulent investment schemes can negatively impact people's lifestyle, financial security and mental health. In September 2018 we were investigating 35 reports of investment fraud, which has reduced from the 51 reports we were investigating in March. However, this does not mean that the issue is becoming less serious. Many of the claims involve groups of people.

There have now been 114 claims to the Compensation Fund totalling £48.2m since 2015 relating to investment schemes. This figure does not include claims to the Compensation Fund about mortgage fraud.

We have updated our warning to firms about never allowing the client account to be used as a banking facility [[/solicitors/guidance/improper-client-account-banking-facility/](#)]. We are carrying out research to understand why people get involved in dubious schemes. We can then give the public information so that they are less likely to be drawn into these scams.

Managing claims

Over the last six months there has been a slight increase in the proportion of firms that are an alternative business structure (ABS) that specialise in personal injury work. We believe that personal injury firms may find it easier to become an ABS due to their existing relationships with insurers and claims management companies.

We are still receiving reports of firms paying prohibited referral fees, which might be disguised as marketing costs. And some firms are handling all payment protection insurance cases the same, rather than tailoring their approach to each client or claim.

We have updated our warning to solicitors and firms about the conduct of some holiday sickness claims [[/solicitors/guidance/holiday-sickness-claims/](#)]. We are concerned that some claims are being submitted without proper analysis of the evidence or an understanding of the legal position. The Legal Choices [<https://www.legalchoices.org.uk/>] website gives questions that people with genuine holiday sickness claims can ask a solicitor.

Money laundering

The Government's National Risk Assessment [<https://www.gov.uk/government/publications/national-risk->

assessment-of-money-laundering-and-terrorist-financing-2017] views conveyancing transactions and the creation of complex business and trust structures as serious risks in terms of their exposure to money laundering. Although it recognises that few solicitors are knowingly involved in illegal activity.

The number of money laundering reports we receive is continuing to rise. There has been a 43% increase in the first three-quarters of 2018 compared to 2017.

Solicitors and firms – even where they are not in scope of the money laundering regulations – must never allow their client account to be used for money laundering purposes. There should always be a legitimate underlying legal transaction. We have updated our warning to firms about the improper use of a client account as a banking facility [<https://www.sra.org.uk/bankingfacility/>]

The Financial Action Task Force's report on professional money laundering [<http://www.fatf-gafi.org/publications/methodsandtrends/documents/professional-money-laundering.html>] offers useful insights into how money launderers can exploit firms. Firms and solicitors can use this to help develop and update their own risk assessment, as well as our risk assessment [</sra/how-we-work/reports/aml-risk-assessment/>], the National Risk Assessment and using their own knowledge of their services and clients.

We are supporting the Institute for Criminal Policy Research's study [<https://bbk.onlinesurveys.ac.uk/the-role-of-professional-enablers-and-money-lau>] into how professionals are targeted and recruited by money launderers.

Protecting client money

This year we have seen an increase in the reports to us about the misuse of client money or assets. We are now receiving around 104 reports each month. Staff need to be trained how to keep money safe from potential threats, such as cyberattacks or other fraudulent behaviour.

Firms should carry out proper due diligence on potential employees [</sra/news/press/2018/due-diligence-new-partners/>]. There have been two recent cases of fraudsters being employed by small firms and stealing client money. We have also seen cases where firms have employed staff that have a section 43 order against them. This check should also be part of firm's recruitment processes.

We have updated our warning to firms [</solicitors/guidance/improper-client-account-banking-facility/>] about the improper use of a client account as a banking facility.

Standards of service

The Legal Services Consumer Panel found that there has been an increase in the proportion of people satisfied [<https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports/>] with the service from their solicitor. And more people feel confident about complaining to their solicitor. This means there has been a decrease in the proportion of 'silent sufferers'.

Our continuing competence toolkit [</solicitors/resources/cpd/tool-kit/continuing-competence-toolkit/>] gives useful information and resources to help solicitors reflect on their practice and keep their technical, ethical and legal skills and knowledge up to date.

We are addressing concerns with the standards of advocacy by developing our approach to regulation so that we:

- better assure standards at point of entry and award relevant practice rights through a rigorous, standardised assessment

- support practitioners to meet our high standards
- use information we receive to drive up standards and target those solicitors at greatest risk of not meeting our standards.