

Reynolds
Porter
Chamberlain LLP



Risk Management Issues

Dominic Dennis-Browne

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Introduction



- Legal profession: growing business – 26% more solicitors since 2000
- 95% of profession is 1-10 partner firms
- Administrative and legal errors
- Breadth of the law – don't dabble!
- Low risk does not mean no risk
- Types of claims: litigation / property

Choosing the right clients



- good client vetting system
- conflict checking system
- Choosing the right work
- Financial controls and cost

Clear instructions



*“Where a client, in full possession of his faculties and apparently aware of what he is doing, seeks the assistance of a solicitor in the carrying out of a particular transaction, that solicitor is under no duty... to go beyond those instructions by **proferring unsought advice on the wisdom of the transaction**”*

Clarke Boyce v Mouat [1994]

Clear instructions



- *Pickersgill v Riley* [2004]

Pickersgill v Riley



- Mr Riley...
 - Was used to commercial guarantees
 - Had wide business experience in England
 - Knew future profitability speculative
 - Had negotiated underlying deal himself

Clear instructions



- *Marplace (No. 521) v Chaffe Street* [2006]

Clear instructions



“ It is true that there are dynamic corporate lawyers who take on themselves a role very close to the client, and identify strongly with the client's interests, particularly if the client is an important and regular client of the firm and the solicitor has worked closely with the client and knows the client's thinking and requirements.”

Marplace (No. 521) v Chaffe Street

Clear instructions



- Football League Ltd v Edge Ellison [2006]

Clear instructions



- Sophisticated clients
- Sophisticated lawyers
- No general retainer

Clear instructions



- Client's level of sophistication
- Scope of the job
- Beware of terms agreed by the client direct

The Perfect Client...



...tolerates limitation clauses

The Perfect Client...



- *Marplace (No. 521) v Chaffe Street* [2006]
 - A rare decision on liability caps in professional retainers
 - Judge upheld the solicitors' liability cap of £20m

Marplace (No. 521)



■ Influencing factors

- Sophisticated client
- Client accepted without demur the accountant's cap
- Cap was discussed & was truly negotiable
- Subjectively reasonable having regard to available insurance cover

■ Claimant's arguments

- Lack of evidence as to the availability of higher cover
- No evidence of sector practice
- Breach of solicitor's fiduciary duty not to advise clients on cap, likely risk exposure, etc

Marplace lessons



- Have a documented, coherent policy for setting liability caps, and one that you are prepared to rely on in court
- Be prepared to disclose the cost of obtaining more insurance
- Make it clear that the cap is negotiable
- Ask to see what has been agreed with the other professionals involved

Limited Liability Partnerships



- Much more fashionable. 14% of firms in England and Wales have converted
- The Gazette, 17 May: “*40% rise in LLP’s fuelled by risk management*”
- Why? Risk management primary driver
- Does not offer 100% protection in event of disaster.

Systems and Minimising Risk



- Clear policy
- Culture: no blame approach
- Risk Manager – not a reason to relax!
- Operational risk. Dealing with claims and complaints

Risk Areas



- Partner lateral hires / recruitment
- Disaster plans
- Diary system
- File review system
- Post / emails

Risk Areas



- Undertakings
- Money laundering
- Cheques
- File notes
- Merging

Solicitors' Code of Conduct



- 1 July 2007 (www.sra.org.uk)
- Code deals with:
 - Core duties (Rule 1)
 - Client case (Rule 2)
 - Conflicts and confidentiality (Rules 3&4 – the specific provisions of which came into force last year)
 - Business management (Rule 5)
 - Equality and diversity (Rule 6)
 - Relations with third parties (Rule 10)

Solicitors' Code of Conduct



- Rule 5.01 (1) (L)
- *“Firms should have arrangements in place for assessing the risks attaching to each area of their operation. The rule is aimed at ensuring risk is addressed in the firm’s overall management framework. If a particular risk materialises which had not been foreseen in the firm’s systems, this would not necessarily constitute a breach of (the Rule). Risk management arrangements are unlikely to be considered adequate unless they include periodic reviews of the firm’s risk profile.”*
- Penalties for the breach

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Thank you for listening!

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