

**Award winning IT journalist and industry commentator Charles Christian has been following developments in the legal technology market since the late 1970s. As well as publishing the Legal Technology Insider newsletter, he is also the IT columnist for the Law Society Gazette and IT tutor for Nottingham Law School's MBA in legal practice course. In this article he looks at the growing importance of risk management - and the fact it does not automatically mean law firms have to install yet another category of software system...**

## **RISK MANAGEMENT - DOES THAT MEAN INSTALLING ANOTHER SOFTWARE SYSTEM ?**

If you analyse the complaints and legal claims brought against solicitors practices in England & Wales in recent years, very few of them actually relate to the quality of the legal advice given. Instead, the largest single category involve breakdowns in communications, with clients complaining their lawyers did not keep them fully up-to-date on the progress of a matter, closely followed by breakdowns in legal service delivery, typically through milestone dates and procedural deadlines being inadvertently overlooked. The net result however is the same as if the firms had provided poor advice, namely claims for compensation, plus adverse publicity in the local press and subsequent increases in their professional indemnity (PI) insurance premiums.

But when you talk to the PI insurance providers, what is interesting from the claims angle is their experience suggests that in many instances firms have no option but to settle because their own internal records are in such a mess that they are unable to adequately defend the claims being brought against them. For example, although a fee earner may know he spoke to a client on the phone about a particular issue and subsequently confirmed that advice in an email message, if - when a dispute arises 18 months later - he cannot lay his hands on a copy of the file note he made at the time of the conversation and the email message has been deleted from his Outlook box, he will be unable to substantiate his version of events.

As a consequence of so many claims arising in this fashion, PI insurers are now placing far greater emphasis upon risk management by law firms - in other words the implementation of procedures and systems that can not only help identify where the risk of claims might arise but also introduce checks and balances to prevent them from arising. The aim is to create an environment in which firms no longer find themselves at a disadvantage in 'your word against mine' disputes and to ensure they have the records and evidence to support their position. And, just as High Street jewellers shops who install burglar alarms and grills on their windows can obtain a more favourable deal from their insurers, so law firms which implement demonstrable risk management systems can negotiate lower premiums (or at least minimise the level of future premium increases) from their PI insurers.

It is also worth bearing in mind that we are not just talking about exposure to negligence and professional disciplinary claims. As every solicitor knows, over the past decade there has been a huge increase in the volume of red tape law firms have to comply with, including the Rule 15 client care provisions, conflict of interest searches and the anti-money laundering regulations. Furthermore, with more changes in the pipeline, including the implementation of the Clementi report and the likelihood of the EU introducing its own version of the US Sarbanes-Oxley regulations (which are already proving a major headache for UK law firms with US offices and clients), it seems likely that compliance is going to become a much bigger item of the agenda for law firms of all sizes.

But, will the introduction of risk management procedures mean firms are also committed to the additional financial burden of investing in a whole new set of IT support systems?

Inevitably some firms, particularly those still running older and more pedestrian legal software applications, are going to have to invest in newer technology. But if you already have a good modern practice management (PMS) and/or case management system at your disposal, you are actually well along the road to implementing a viable risk management system. For example, consider some of the issues you need to address...

- New client/file opening procedures, including Rule 15, money laundering and conflict of interest checking: All these elements should be a standard feature of your PMS or case management software so your firm's fee earners cannot start working on new clients' matter until these steps have been completed. Furthermore, these systems will also provide audit trails and documentary records to prove at some later date that you actually complied with the regulations, so you no longer face the professional embarrassment of being unable to substantiate your position.
- Practice/client/third-party defined workflows: Although these will vary from worktype to worktype, the underlying concept remains the same, namely a way to structure the case plan for handling an entire matter process from inception to completion, taking into account key dates, milestones, limitation periods, compliance with the Civil Procedure Rules, LSC and CDS franchise provisions and the business requirements of clients. Typically this functionality will reside in your case management software (although some elements can be found in a modern PMS) and provides an auditable way for firms to process tasks in a cost effective way, including delegating responsibility for some actions, while still allowing practice managers and departmental heads to maintain overall management control through a series of reminders, exception monitoring and escalation reports

- Document (including email) management and retrieval: Another of the classic risk management black holes involves documents that go astray so when a dispute arises, fee earners are unable to lay their hands on a copy because it is either 'lost' in the system or been inadvertently deleted. Once again a modern case management system will allow you to automatically store documents, including correspondence, forms and emails against the appropriate matter file - and subsequently retrieve it at a later date, complete with some form of matter history log, so there is an audit trail showing all the activities that have taken place during the life of the file. With this kind of functionality it therefore becomes possible to not only produce a copy of a document perhaps months, or even years, after the file was closed but also to prove that the document was created when you said it was or that an email exchange took place on a specific date.

And, do remember that the same software delivering the risk management functionality - because we are dealing with standard features of modern case and practice management systems - is simultaneously delivering all the benefits you would expect from a good legal IT system, including better management information and fee earner productivity.

Finally, there is another - and more proactive - way of looking at the whole issue of risk management and compliance. The point to focus on here is the systems you deploy to manage and minimise risk are exactly the same systems you also need implement quality assurance schemes, such as Lexcel, and compliance with the service delivery standards and procedures required by Legal Services Commission and Criminal Defence Service franchises, mortgage lenders and similar volume instructors, such as insurance companies. They are two sides of the same coin: on one side an administrative overhead but on the other side a tool to define and ensure quality assurance - a facility that can be used to market your firm's services to prospective clients and panel managers.

Risk management therefore may well have become the latest administrative overhead to burden law firms - and it looks like becoming an increasingly onerous burden in the years to come. However, providing you have invested in good, modern practice management and/or case management software, you should find you already have at your disposal all the tools you need to implement a demonstrable risk and quality assurance management system to the satisfaction of your PI insurers, compliance organisations and clients.

If you do not have suitable systems at the moment, then the chances are you are still running an older legal IT system that is coming to the end of its natural life and will soon need replacing by next generation Microsoft .NET technology - in which case use this as an the opportunity to switch to a supplier who can also deliver risk management functionality, as well as all the more traditional features of legal software.