

Management of Risk

Every firm is concerned with risk management, not least because their professional indemnity insurers make sure they are. But where should you look for these risks in a modern law firm, and how does IT play a part?

While there are huge numbers of different risks that can be looked at, these fall into four broad areas.

Risks in processes

The work of a law firm is all about processing information, and hopefully adding some significant value on the way. Firms have a duty to their clients to do this efficiently and accurately, even where they are not working on activities with specific timescales. Where deadlines for filing documents or responding to other parties are involved, it is vital that these processes work smoothly.

The biggest risks come with steps being missed out or not completed correctly, or with deadlines being missed. Both of these can be reduced by having a set system and recording progress, rather than relying on someone remembering what is happening. Simple paper notes and checklists can make a significant difference, and for complex processes firms have used computer based case management systems for many years. We are also now seeing matter management systems to help track more general matters and help fee earners track more matters and more complex workloads.

Risks with people

People are always an area where things can go wrong; human error is probably the most common result of any investigation into mistakes made. Added to the genuine mistake is a growing risk of deliberate acts as part of a fraud or with malicious intent. Part of the solution to this problem is to have defined supporting processes to help avoid accidental mistakes.

The most effective action that can be taken to minimise the risks from people is to have checks and balances to try and detect problems before they become an issue. Peer reviews as well as reviews and sign off by more senior staff all reduce the scope of a single individual to create a serious issue. These reviews can be built in to specific procedures at key points, or firms can ensure that general principles of review are part of all working practices.

Interestingly, even though the need for review procedures is growing through a combination of increasing threats and increasing regulation, the fact in many firms is that effective review is being reduced. The rise of email as a communication mechanism, and the trend to push work lower down the hierarchy to more junior staff has led to a situation where a greater

amount of communication is leaving firms with little or no review. Addressing this without strangling the working method of lawyers is problematic, but does need to be done.

Risks in systems

As we have seen above, risks can be reduced by using systems and procedures to check things have been done and have been done at the appropriate time. It is obvious that the use of computers and software to help with this can make a huge difference. However, as with everything else the introduction of a new factor also introduces new risks.

Computers can only be relied upon to the extent of the information they are given and the quality of the program written for them. They do not have the ability to make judgements and double check things that seem wrong. It is very important to make sure that information entered is validated to make sure it is reasonable to avoid problems such as reminders being missed because a typing error in a date entered meant the computer was waiting for 2050 instead of 2005.

The system being used to process the information also needs to be able to deal with a wide range of scenarios. In law firms, there are a number of factors that mean that the software may be less reliable than the ideal. In the first instance, systems will typically not be written by lawyers. This means that they can only have the capabilities that the programmer was told about. Even if a lawyer may know that in certain circumstances some other rules would apply, they may not think about this in the abstract when talking to the developers. There are also potential problems caused by the casual in house development used in many firms to support particular areas of the business or for specific clients or types of work. As this is a rough and ready solution to an immediate problem, the software will not be designed and tested to the same extent as a fully supported commercial or in house system. This is not a problem so long as the users are aware of the limitations, but it often happens that software such as this grows and becomes more widely used, perhaps by people not aware of its history who rely on it more than is appropriate.

A final version of these problems is the use of standard products such as Outlook. Many lawyers will have an Outlook calendar, perhaps shared, to track key dates, or perhaps a spreadsheet tracking certain activities or information. While these are very useful, they will all have avoided any form of risk assessment or judgement as to whether they are fit for the purpose. Problems may occur with access to the information if the owner is absent or with reminders for critical dates being missed.

With any computerised system from the simplest to the most complex a judgment needs to be made about the risks involved with the information it is processing and the activities it is supporting. This will allow an appropriate level of testing, control and support to be provided to that system. For simple systems, firms should be issuing guidelines to lawyers as to what is

appropriate for them to do themselves in Outlook or Excel, and what would be an unacceptable risk in that format.

Risk and information

The entire business of a law firm depends on the information it is holding, whether this relates to a specific client or it represents accumulated knowledge to support future work. Whether this information resides on paper or in electronic format, it needs to be looked after and can give rise to a number of large risks.

The two big problems that can occur are irretrievable loss of information and of information being made available to people who should not see it. The first of these is almost becoming unacceptable as the lower cost and increasing capabilities of IT make it easier to keep multiple copies. To do this cost effectively does require firms to be able to differentiate between different types of information that require different methods of storage. The approach taken currently by most firms of treating all information as live, and hence needing complex backup procedures, will become prohibitively expensive, but this will not provide an excuse for loss of information as managing information in this way is not necessary.

Controlling access to information is also a complex task, but firms should have a formal security and access policy and procedures to ensure it is effective. Traditional and simple inside/outside boundaries are no longer sufficient with client extranets and internal Chinese walls and confidentiality requirements all blurring the definitions.

Summary

Risk has always been part of the landscape for a professional firm. In the current world, effective management of risk and a reduction in overall risk is being forced on firms more and more by a combination of insurers and government regulation.

The key to keeping the levels of risk low is to understand that they change over time, and the whole area needs to be looked at continually to make sure that levels are not creeping up. In other words, risk management is an active exercise and not about compliance with a fixed set of rules.

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