

# Briefing

RISK AND COMPLIANCE

FEBRUARY 2012

*Interview*

**Heather McCallum**

A&O's head of risk and compliance on how risk management is changing today's top firms

*Feature*

**An OFR and ABS special**

What will OFR do to risk management? How will ABSs deal with risk? We find out

*Exclusive*

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**— Brendan McDonagh**  
*Director of Practice Management*  
**Norton Rose**

We chose Wall Builder because of its broad adoption, its advanced architecture, and IntApp's vision for integrated information risk management, both on the ground and in the cloud.

**— Mark Boggis**  
*Director of Enterprise Architecture*  
**Clifford Chance LLP**

We are very pleased with the implementation of Wall Builder. The product is easy to use, and provides significant advances both in terms of functionality and efficiency.

**— Kohtaro Iga**  
*Senior Conflicts Analyst*  
**Clifford Chance**

We undertook a strategic initiative to enhance the firm's existing confidentiality practices and respond to a changing regulatory environment. We selected IntApp Wall Builder after reviewing available options and confirming its position as the industry leader for confidentiality management, judged by product capability, peer adoption and vendor support.

**— Jayne Hawkes**  
*Head of Business Acceptance*  
**Addleshaw Goddard LLP**

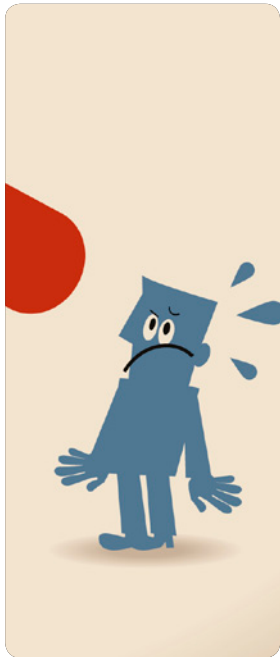
We selected Wall Builder because it's a mature product that has been widely adopted by law firms, and because IntApp possesses the necessary expertise and could demonstrate success working with large, global firms to address information barrier and client confidentiality requirements.

**— Heather McCallum**  
*Partner & Head of Risk and Compliance*  
**Allen & Overy LLP**

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# An OFR you can't refuse?



Risk is a big topic in today's world. It's something we think we understand. But it's not – or there wouldn't be USB sticks left on trains, or lawyers caught in mortgage fraud scams.

This month we take a cross-topic look at risk management, from how outcomes-focused regulation will affect PII, to how firms can turn processes into compliance.

Our keynote [interview](#), with [Heather McCallum](#), head of risk at A&O, is worth a read, whichever role you're in – she and her team are an example of where big firms, or firms that want to be big, have to go to compete in future.

We've got a [wide-ranging feature](#), exclusive [new research into risk management in legal](#), and articles, interviews and cases studies in our [industry analysis section](#) – including comment on [the state of risk management from Elite](#), and an [interview with Pat Archbold of IntApp](#) on how firms can leverage their data to improve compliance.

We've also completely redesigned **Briefing**. Most magazine editors spend a lot of florid prose getting to that statement – not us. I hope you like it.

**Rupert Collins-White, editor of Briefing**

## Interview: A&O's risk chief, Heather McCallum



A&O's head of risk and compliance, Heather McCallum, talks to Rupert White about how risk is changing in today's top firms

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## Feature: The first day of the rest of our lives?



Philip Hoult reports on how OFR is another challenge to today's risk leader – and how the legal sector is changing to adapt

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## Research: What's it like in a top 100 risk team?



Briefing has exclusive access to research into how risk is managed in the top 100. Plus: what OFR and ABSs will do to PII premiums

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TURN OVER TO FIND OUT WHAT ELSE IS IN THIS MONTH'S ISSUE

# Industry analysis

As always, in Briefing we bring you relevant industry analysis from some of the legal sector's leading voices. This month: analysis from issue sponsor Elite, Nikec Solutions and Canon; Briefing interviews Pat Archbold, IntApp's risk practice chief; and a case study from e-know.net on how cloud IT helped Morrisons Solicitors to become compliant without lifting a finger.

This month's interview with Heather McCallum at A&O was transcribed by:



## New risks, new challenges

Elite's Bill Burch on how risk must be managed in every part of today's firm

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## Interview: Pat Archbold, IntApp

IntApp's risk chief on why firms must put their data to better use to manage risk

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## Study: Outsourcing compliance

e-know.net's hosted IT delivers firm-wide compliance to Morrisons Solicitors

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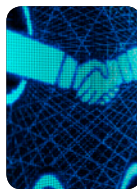


## Managing social media

Does your firm get the risks of social media, asks Hannah Jones at Nikec Solutions

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## Hidden threats

A fax/copier could be a security risk to your firm, says Canon's Quentyn Taylor

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# We've come over all graphical...

Check out the research into law firm risk management and compliance teams on page 21.

## Who's doing the work?

**33%**

of top 100 firms still rely on fee-earners and secretaries to complete new client/matter procedures

Only 10% of top 100 firms have an integrated PMS or workflow solution for conflict checking, say risk people

**1 in 10**





*Interview*

## **risk and reward**

A&O's head of risk and compliance, Heather McCallum, talks to Briefing about how risk is changing in today's top firms, and why globalisation and client needs are driving grander changes than local regulation can ever make

As law firms have grown, and their client bases have spread over the globe, their risk management functions have been pulled away from fee-earners and been centralised with risk teams. In advanced firms, the work has also been automated using software.

But this advanced risk culture hasn't penetrated every firm in the top 100 – in fact, if research exclusively revealed in this issue of **Briefing** is right, it has barely penetrated beyond the biggest international firms.

So how and why are those top firms putting risk at the heart of business – using it to define not just which work you can do, but also what work you should do, which clients are best for you, whom to hire and even where to work?

Over the years, the top UK law firms have grown risk teams that can number many tens of people, or more. The average risk team in top 100 firms outside the top 10 numbers seven and a half staff (according to research for Lockton Insurance by Kindlesworth – the Risk & Compliance Index) – and firms in the top 25-50 likely have many more than that. But it's who's leading them that matters...

### **View from the top**

Heather McCallum is head of risk and compliance at one of the world's largest firms: Allen & Overly. She started her career at A&O, and has never strayed. She worked up to partner under one of law's big names, senior partner David Morley.

She didn't intend to be a lawyer – she switched degrees from natural sciences to law

because “I just decided law might suit me”. Though she’s now in a ‘support’ role, she still has a practising certificate and uses her fee-earning experience to good effect.

Having worked as a lawyer before moving to a ‘support’ role has an advantage, she says, when it comes to being a risk leader: you understand what it’s like to be fee-earner, and the demands of the job; and you’ve got to get on with people, because you’re getting them to do things they generally don’t see as a priority – and years in their shoes helps develop those skills.

“One has to be a diplomat and an arbitrator and, I think, if you are not a natural people person, it’s probably quite a hard role to do. You are embedding [risk] culture rather than just making rules, because lawyers love to try and get round rules.

“It also helps when you are crafting your policies and your rules [because you’re attuned to the fact that] you have to balance risk. It is not risk avoidance, it is not risk elimination – it is risk management. At some point you are going to accept risk.”

## Process makes perfect

Risk is an especially hot topic right now, as firms chase emerging markets while big mergers are in progress or in the wings, and business development’s eyes are turning away from a fractured Eurozone and towards markets like China and the Middle East.

Firms like A&O not only have to consider a complex basket of jurisdictional risk issues, they also have to bind themselves to regulations within their core country.

In London, that means outcomes-focused regulation (OFR), the new and improved

regulatory system for legal. OFR is very useful for firms like A&O, but hasn’t been welcomed in every legal business.

“With OFR, you can flex a bit more. I know there are a lot of risk managers who find OFR slightly uncomfortable, who preferred the old rule-based approach – and it does give rise to uncertainty – but it also means that you can take a risk-based one, which is something you



could not always do.”

OFR was the method used by the Financial Services Authority up to the point when the banking system melted down – not its greatest advertisement. McCallum seems to find this darkly ironic, but, she says, using OFR for lawyers is different.

“The timing is curious given that the profession is bringing in OFR just at the point when everyone is looking at financial services and saying: ‘Was that the appropriate thing to do?’” But, she says, lawyers are generally more used to identifying risk than bankers, so the move isn’t as risky as it might seem.

“But there is a balance to be struck. You may need to take some additional risks, because

you don't want to stifle entrepreneurialism or growth into emerging economies, where clearly the risks are greater. But one wants to do it in a measured way."

As the OFR model was developed, some said that it might loosen the top 10's shackles, but smaller firms would suffer when the certainty of a tick-box risk culture was taken away.

McCallum says this is "possibly" so, but also that "even some of the City firms have struggled with the lack of guidance". Large and small firms have less to worry about than they think, she says – "I think all firms that were compliant with the code are likely to be compliant with OFR". But the 'squeezed middle' are a different matter.

"They may have a diverse client base and a diverse practice, where they liked the certainty of rules and are worried about the lack of certainty of OFR," she says.

"But OFR pushes people towards a more systematic and cultural approach to risk, and a less tick-box approach, which in the long term is the right way to go – because you need risk management to be cultural, to be embedded."

## Rise of the robots

What the bigger firms do that many in "the next tier down" don't, says McCallum, is the more holistic kind of enterprise risk management – or "joining up the dots".

This is achieved through getting risk into every agenda and sharing knowledge and needs between key departments – such as IT, HR and BD. But it's also achieved through technology –

and through automating and 'workflowing' risk to make it much more manageable.

A&O achieved the gold standard in IT security for its document management (DM) system – ISO 27001 – across most of its global operations. This delivers instant clarity for clients over data security.

At A&O, filing is virtual. It has a closed access system, so by default you can only get

*"OFR pushes people towards a more systematic and cultural approach to risk, and a less tick-box approach, which in the long term is the right way to go – because you need risk to be cultural, to be embedded."*

Heather McCallum, head of risk and compliance, Allen & Overy

access to a file if you are 'on the list'. And, as the firm was building this tighter ship, people realised that going for an internationally recognised standard, like ISO 27001, would make BD's life a lot easier.

"In response to these pitch questions about security, you can write woolly words, or you can say we are ISO 27001 compliant for our DM system," McCallum explains.

Some people in legal have wondered why only A&O's DM is ISO 27001 compliant and not the whole firm, but McCallum says this covers the most important aspects of information security risk for a law firm, and touches on many areas of IT operations beyond, not just the document libraries.

“If you think about what is key for the clients, it’s confidentiality – and that is largely about DM.”

And it’s not as if getting ISO 27001 certified is easy, she points out.

Going for ISO 27001 is also a big clue as to why Big Law doesn’t really need national regulation any more. Fundamentally, a large international firm has to look to international standards in business, regardless of whether it’s in IT or not, because it’s good business – clients in Manila don’t care if you’re compliant with the SRA’s handbook; they want something better than that. Preferably, they want their legal advisers to conform to the same international business standards they work to.

This has a lot of side-benefits, mainly because law firms are part of a client’s supply chain, and supply chains are now bound fast to corporate compliance.

“You need global standards like 27001 for very large law firms, [because] the reality is that, to run an efficient global business, you have to systemise everything, whether or not regulation in the core country, for example England and Wales, [requires it].” In other words, compliance should come as a by-product of having standards like 27001 in place.

## Global standards, not local regulation

This last point is central to the changes that are being wrought in large law firms in relation to regulation and risk, and what increasingly separates them from the rest of the sector: core country regulation is playing second fiddle to the needs of the clients, because regulation isn’t fully covering the elements clients want to have squared away.

The client is the driver to pretty much all risk behaviour in A&O, says McCallum. This doesn’t mean the client supersedes regulation,

but client needs are pushing the firm to do far more than a regulator would.

“We are managing risk from the perspective of good business practice, not because the handbook says you must have in place systems and processes to effectively manage risk,” she says. This is why the large firms are probably happier about OFR than some of the smaller firms – they’re already miles ahead of it.

A&O isn’t a distributed, Swiss verein firm like Norton Rose, Baker & McKenzie or DLA Piper, for example – it’s one big global business, so it’s had every reason to centralise its risk management function and automate work, to turn it into workflows and processes. It’s a model for how to do something most commentators would say is inevitable for larger law firms – though many aren’t quite there yet.

The Lockton/Kindleworth R+CI research throws up a telling point about how top 100 firms outside the top 10 are turning risk into workflows and automated processes – or not. Only one in 10 of those questioned had an integrated practice management system or workflow solution for conflict checking. And around a third of those firms still have fee-earners and secretaries carrying out new client and matter inception work.

This doesn’t happen at A&O. “You cannot open a file locally; you can only open a file through the central Business Acceptance Unit (BAU). You cannot generate a conflict search locally; you can only generate a conflict search through the BAU. We draw it all into the centre, [so] we have the holistic view of the client base,” McCallum says.

A&O’s BAU is one of a pair of risk units at A&O, and is staffed by lawyers and business services people (the other, the partnership office, is nearly all lawyers). The BAU runs almost 24/7, McCallum says, with people on call in London and Singapore – and, eventually, the US.

## Turning risk into reward

But risk isn't all about opening matters and conflict checking – in leading firms, that's just the beginning. The risk capability of a firm is now a factor in winning new business – and, internally, risk is now influencing BD and business analysis: which clients should the firm be working for, when, and why?

There's a growing partner awareness that risk management can help the business develop, says McCallum. A good example is in client prioritisation. "Historically, if work came through the door, you did it, unless there was an absolute conflict. Now there is a lot more thought, within the large firms at least, around strategy: Who are our key clients? And do we have entities that, for conflict reason, we cannot act for – so-called 'anti-clients'?"

"You can look at conflicts and say: 'These are our key clients in that sector, and we are going to ensure that we remain free to advise them, because that is where we have deep relationships.' That's a selling point."

Of course, you can only do all that if risk enters into the work-winning process far in advance of client/matter inception – McCallum says that it has happened that, in the past, "people wasted time and money courting a particular company, and only then do they run a conflict search – only to find that we were litigating against that company, and there was no way the company could be taken on as a client". But no more.

Getting people to think about engaging the risk team at the earliest time is just as relevant to new hires as it is to new business.

McCallum says that risk and HR should work closely together. That's not always been the case in law firms. In the past, she says, conflicts weren't top of the agenda when people

were looking at bringing in a new partner. But A&O has lateral hire guidelines that require people to think about any obvious conflicts when hiring. "When you bring in a lateral hire, there are all sorts of risk issues to be addressed and conflicts is one of them – and that is a good example of why you want people to have risk in their mind."

The HR/risk connection goes far beyond hiring partners: McCallum's team is working with HR on the new agency worker regulations, for example, to analyse associated risks.



The benefits of an engaged risk team can be almost limitless. So why are so few firms recognising the potential?

The risk team is a rising power, but it's still fairly disconnected from the strategic side of the firm. The Kindelworth/Lockton R+CI research, for example, found that only 13% of those polled felt 'involved from the start/at a fully strategic/long-term level when the firm is considering strategic issues such as lateral hires and significant new teams/offices'.

That's not great – nor is it surprising, says McCallum. She says many law firms still don't

appreciate the importance of embedding risk management in every part of the business.

## The case for a true risk culture

So what is the argument for making that fundamental change?

“It makes good business sense to consider risk management up front, because if you don’t, it’s a rear-guard action,” McCallum explains. “[For example,] if you go into a jurisdiction without having assessed the risks, it is not just about the risks in that jurisdiction but how they might impact on the business as a whole.

“Ultimately, a firm is only as good as its reputation, and you know what Warren Buffet said: it takes 20 years to build a reputation, and five minutes to ruin it.”

A&O and the other big firms are all chasing work in emerging markets – and the last thing you want to do is ruin your reputation in new markets you’ve barely started to exploit.

If your firm doesn’t have this level of engagement, McCallum says the first or best way to start getting risk culturally embedded is to set up forums for discussion and knowledge sharing – this pulls people together and engages other departments with risk without it being all about imposing rules.

“One has to show flexibility,” says McCallum. “[For example,] I sit on the IT security forum and we discuss all sorts of things, [such as] USB encryption. The initial reaction [to that from lawyers] is ‘Do we have to encrypt, because it’s a pain?’ Then you point out the number of

news stories in which people have left laptops, USB sticks or whatever on trains.”

It’s an educational journey for a firm, but risk leaders have to take the firm on this journey through consensus, not coercion.

“Compliance is a subset of risk management. There is a danger that some lawyers will say risk management is just about doing money laundering training – and it’s not, it is about

*“Ultimately, a firm is only as good as its reputation, and you know what Warren Buffet said: it takes 20 years to build a reputation, and five minutes to ruin it.”*

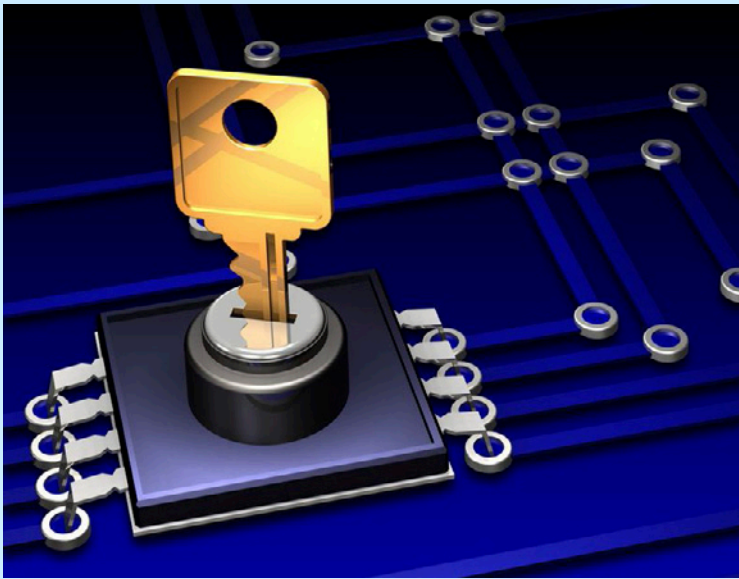
Heather McCallum, head of risk and compliance, Allen & Overy

the way you conduct yourself. It is about whether you re-read your email before pressing send. It’s about whether or not you ‘reply all’. That is all risk management.

“Risk management is not about one person. It is about culture, and it is about having a network between your practice groups and your offices you can call upon. It’s about having champions throughout the business who understand why it matters, and who can communicate this to the naysayers – and convert them.”

Making that happen is the risk leader’s mission – and the examples to follow are already in place. ●

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*Feature*

# The first year of the rest of our lives?

Philip Hoult reports on how a new regulatory environment is yet another challenge to today's law firm risk management leader – and how the legal industry is changing to adapt

Everyone saw it coming, but it's still had an impact on the legal industry that no one can yet measure. The introduction in October 2011 of outcomes-focused regulation (OFR) by the SRA, and the uncertainty it has brought, has been a defining moment in risk management for law firms.

But it's not the only driver that's making risk management issues, and the teams that will lead the fight against them, the slowly rising stars in law firms today.



For risk management people in 2012, long-standing bugbears, such as professional negligence, anti-money laundering and lateral hires have become entrenched alongside emerging risk vectors, such as international sanctions, information security threats and lots more competition in the legal marketplace.

But OFR is the world in which the modern law firm now lives.

“It is early days, but OFR has been a major change in terms of how we regulate ourselves internally,” explains John Verry, risk director at TLT. “The obligation to police ourselves has been pushed back onto the firm, as opposed to coming from the regulator if somebody makes a complaint.”

The change is cultural too, and this will not happen overnight. “If you take the comfort of rules away from lawyers, they get distinctly uncomfortable,” Verry suggests. “One of the key problems I have come across is trying to resist the temptation to approach OFR with a rules-based mentality.”

But OFR should, Verry believes, eventually provide more opportunity to be innovative about the way you regulate your practice.

Hazel Ryan, risk director at Eversheds, agrees that it’s too early to say what impact the regime has had. But greater focus has already been placed on risk management and compliance teams as lawyers come to terms with the new regime. “People increasingly want to bounce ideas off us,” she says. This is a good thing for risk people, as it brings out the importance of the risk teams to the firm.

Marcus Shepherd, risk and compliance Manager at Penningtons, said his team made it clear to fee-earners that they could not assume

that what was OK under the old rules would still be OK under OFR – and that they’d have to check things with risk first.

“The risk team is [now] having to work through queries and provide answers, and



*“One of the key problems I have come across is trying to resist the temptation to approach OFR with a rules-based mentality.”*

John Verry, risk director, TLT Solicitors

document our own views of what we need to be doing under OFR,” he says.

The short period between publication of the final handbook and implementation of OFR added to the burden of the change – as has, some say, the SRA’s refusal to give ‘safe harbour’ advice. Verry says the SRA shouldn’t shy away from giving such advice. “Most other regulators will [do it],” he argues. “They just need to be careful that it is done in a properly structured manner.”

## COLP ability

While the work on OFR goes on, firms are also preparing for the introduction on 31 March of the [compliance officer for legal practice \(COLP\)](#) and the [compliance officer for finance and administration \(COFA\)](#) roles.

These new roles carry more personal liability than some are used to (those who aren't already an MLRO, perhaps), but many believe these posts will make legal services providers better-managed businesses from a risk perspective.

They mirror the financial services regulation model, says Verry, and they're a good idea because they "focus responsibility somewhere", though, he points out, "accountability will of course always rest with the corporate governance of the firm, ie with the members".

Ryan at Eversheds says the COLP/COFA roles are particularly important for alternative business structures (ABSs). "I can see why the SRA wants somebody in that type of structure who is their link point," she says. "The posts should help matters in all firms – provided the holders are of sufficient experience and high enough in the management structure."

For Shepherd at Penningtons, the COFA role will make a particular difference. "Clarifying that financial management [of the firm] is equally important seems common sense to me as a non-lawyer, and is long overdue. Firms that fail due to business mismanagement are a significant drain on the profession."

And fears around increased personal liability are overblown, says Verry. "If you put in place the right processes, procedures and systems

to check compliance, you can't be expected to do any more. If you can show you had these in place and were effectively policing them, I don't think [the COLP will] have a problem if someone breaches them." In fact, the fact that the COLP faces personal liability could prove a useful tool in establishing their authority among partners.

However, an important task will be ensuring

*One of the SRA's stipulations is that the COLP must be a lawyer – which could obviously put a career ceiling on non-lawyer risk managers. John Verry describes this as "unfortunate" – "there are good risk professionals out there who aren't lawyers".*

that the right structures are in place so that these new roles can meet their strict reporting obligations. They must report to the SRA any 'material' breaches as soon as reasonably practicable, and any 'non-material' breaches in an annual information report.

Michelle Garlick, a Weightmans partner who advises other firms on regulatory compliance, says COLPs and COFAs are also concerned about how much oversight they will have to, or even be able to document. "They can't be everywhere at all times," she says.

Worse, they need to find a way to get fee-earners and staff to come to the COLP/COFA to flag an issue, because solicitors might fear they will be reported to the SRA. "You could then face problems of fee-earners not coming

clean, which drives the problem underground,” Garlick says, adding that it is a question of getting the culture right.

One of the SRA’s stipulations is that the COLP must be a lawyer – which could obviously put a career ceiling on non-lawyer risk managers. John Verry describes this as “unfortunate” – “there are good risk professionals out there who aren’t lawyers”.

But, says Ryan, there are advantages to a mix of skills and experience in the risk management team. “Our general counsel and I, together with our deputy compliance director, work very closely together. We all know what our roles are and in a firm with as many people and offices as we have, you need dedicated roles.”

In larger firms there is in any case an understanding that the issue of compliance goes far beyond one person. Garlick says a consensus is emerging for risk committees or at least a team of people, including experienced non-lawyers, covering the issue.

## Lost information is power

The arrival of OFR and the imminent introduction of COLPs and COFAs may be dominating risk teams’ workload, but they are not the only factors to have made firms’ operating environments more complicated recently. The list of other risks is a long one, but two of the hottest topics are information security and competition in the marketplace.

The importance of information security is greater than ever – clients are now making it

part of tenders and auditing requirements.

Andrew Rose, analyst at Forrester and ex-global IT risk manager at Clifford Chance, says the threats to firms’ data are many and varied. Attacks can come from anywhere – organised crime, ‘hacktivists’, opportunists, even nations. And he believes that many organisations have been compromised, but haven’t recognised it.

“Things have become markedly worse over

*“If a firm I instructed was to allow my company’s confidential information to be seen on trains, I would disinstruct the firm, blacklist them and report them to the SRA.”*

Tom Kilroy, general counsel and company secretary, Misys

recent years,” he says. “The criminal only has to come up with one way to break something. We have thousands of servers, desktops and individuals – all of which need patching, education and configuration.”

The loss of data – whether it’s through hacking or leaving briefcases or unencrypted laptops or USB sticks on the train (which even MI5 and MI6 can do) – can have huge ramifications. Also, since gaining new powers in 2010, the Information Commissioner’s Office (ICO) has levied penalties of hundreds of thousands of pounds for breaches of data protection laws. Law firms will surely not be immune from future rulings.

The greater damage, though, will be to

clients' confidence. This is what Misys general counsel Tom Kilroy [said on his blog](#) that he'd do if he learned that his business's data was compromised by careless behaviour: "If a firm I instructed was to allow my company's confidential information to be seen on trains, I would disinstruct the firm, blacklist them and report them to the SRA," he said. You don't get much clearer than that.

A small but growing number of firms are gaining certification for the information security standard ISO 27001, says Rose, who led both Clifford Chance and Allen & Overy through the process. But, he says, ISO 27001 is not simply the preserve of the largest firms. "It is a very flexible standard – you can point it at different sizes of enterprises and it will scale very well."

## Differentiation and risk

Arguably the most significant risk firms face now, though, is the rapidly changing nature of the market.

The SRA has finally started accepting applications from organisations looking to become ABSs – and Verry at TLT says many firms are underestimating the level of competition that is coming.

"If you look at other professions that have deregulated and then at their profile three years later, they have changed substantially," he suggests. "A lot of the organisations moving into the market are very good at what they do – they understand brand quality and service delivery."

But finding a USP can present its own risk challenges. "With increased competition, most

firms are trying to differentiate themselves by offering unique services," says Shepherd. "And there's a risk that the more creative services may not be compliant, or could be difficult to manage to remain compliant."



*"Most firms are trying to differentiate themselves by offering unique services, [but] the more creative services may not be compliant, or could be difficult to manage to remain compliant."*

Marcus Shepherd, risk and compliance manager, Penningtons

The legal market is also going through a bout of consolidation – 2011 saw high-profile mergers involving Davies Arnold Cooper and Beachcroft, and Clyde & Co and Barlow Lyde & Gilbert, while the latest news is that Pinsent Masons and McGrigors will merge, and Russell Jones & Walker will be absorbed into Antipodean giant Slater & Gordon.

Risk management teams have a role to play in meeting all these tests. But one of the notable features of the role area is the variety of approaches that firms have taken to structuring their risk management operations.

“Some firms have put in place very sophisticated systems, while other firms have put in place large operational teams,” says James Hacking, former head of operations at Olswang and now co-owner of consultants Kindlesworth. To find out whether anecdotal evidence of this disparity was true, and to provide firms with the ability to benchmark risk management, Kindlesworth recently surveyed the top 100 firms’ risk people (less the top 10) for insurance brokers Lockton to create the Risk & Compliance Index (R+CI).

The R+CI research showed significant variations in practice across the 100 – for example, as to whether processes are automated or manual, and who’s doing them. One third of respondents still rely on fee-earners and secretaries to complete new client/matter procedures, and just one in 10 had an integrated practice management system (PMS) or workflow solution for conflict checking.

## IT’s vital importance

The reasons for this recidivism vary widely. It could be a consequence of the people put in charge of risk – some firms may have less IT-literate partners or ex-partners in the role. Others may have appointed someone with an

operational background, who’s more familiar with how systems might work at the back-end, rather than how they might be used to take responsibility from the user.

Hacking also points out that firms that installed their PMS five years ago would not have access to the more ‘out of the box’ solutions now available. But replacing a PMS is obviously a daunting outlay.

A more immediate option is to have the IT

*“[Integrated IT approaches to risk management] are not the answer in themselves, but they go a long way to providing a greater level of accuracy, efficiency and data capture. With the advent of the COLP, it is going to be critical to get accurate reports quickly and effectively.”*

James Hacking, partner, Kindlesworth

department become much more involved in planning and introducing risk management and compliance systems – but only half of the R+CI respondents felt that their IT department was “proactively engaged” in this way.

“Those firms where risk teams are supported by IT, and the IT team has a very good knowledge of what is required to be effective, are the ones who have ended up with integrated approaches,” suggests Hacking.

“These approaches are not the answer in themselves, but they go a long way to providing a greater level of accuracy, efficiency and data capture. With the advent of the COLP, it is

going to be critical to get accurate reports quickly and effectively.”

If a firm does not have a good collection of information at the outset it will struggle, Hacking says, which is why “these systems are now more important than perhaps they have ever been”.

On top of the need for enhanced management reporting, there will be growing use of outcomes-testing, particularly through random auditing. This involves testing a system by taking sample files and seeing whether the firm is producing compliant work, explains Garlick at Weightmans, because “the COLP and COFA will want to monitor whether procedures are working or not, but this testing can be incredibly time-consuming”.

## Can risk add value?

Investing in risk management in this way – or through automated solutions or extra manpower – has clear resource implications

According to the Lockton/Kindleworth R+CI research, a third of risk people felt their team needed to grow in 2012. But this is a difficult case to make at a time when finances are under pressure. “You just can’t keep throwing money at compliance when every other part of the business has budgets and limits on how much it can spend,” says Frank Maher at Legal Risk.

Demonstrating a return on investment for your risk team is a hard task, and one attempted by very few – just 15% of the R+CI’s respondents said their firms conducted any

risk management cost benefit analysis (or equivalent).

Maher is working on the ROI challenge, but he admits there’s no complete answer. There are identifiable events to which risk teams can point, such as savings negotiated on professional indemnity insurance, fending off a major SRA investigation or settling a claim advantageously. But a comprehensive set of



metrics is hard to produce. But, he says, finding a way to show how valuable a risk management team is to a firm is hugely important.

Whether risk teams will get the resources they feel they need remains to be seen. TLT’s Verry, for one, is meanwhile optimistic about the future for law firm risk management.

“This is the most exciting time since I qualified in 1981,” he suggests. “Change gives huge opportunities to go out there and improve your business, to find new ways of service delivery. You will be dead in the water if you don’t change, there’s no doubt about that – it’s just a matter of getting the change right.”

And that is where the best risk teams will be, helping to create the conditions for success. ●

*Research*

# What's it really like in a top 100 risk team?

Briefing has an exclusive this month – an insight into the workings of the risk management and compliance teams in the top 100 law firms.

Over the page, we'll reveal more results of a survey of top risk units – the first Risk & Compliance Index research (R+CI), carried out for Lockton by Kindleworth, a consultancy made of ex-risk and operations leaders in a top 100 firm themselves.

Even better, we've made a clever infographic out of some of the data from the research – that's a sneak peak on the right, and you can download it, free, on our website.

Want to find out more about the R+CI research? Then visit the websites of Lockton and Kindleworth to enquire:

[www.lockton.com/solicitors](http://www.lockton.com/solicitors)  
[www.kindleworth.com](http://www.kindleworth.com)



**Click!** to download LSN's risk management infographic

## Research

# Risk in detail

Kindleworth surveyed 32 of the top 100 firms outside the top 10 to find out what's really happening in risk management – and this is what they found

### Size of risk management teams

Across the top 100, the average size of a risk management and compliance (RM&C) team (or those responsible for risk) is 7.5 full time equivalent staff.

### Measuring value

Only around 15% of firms in the top 100 conduct any cost benefit analysis (or equivalent) on their RM&C teams each year.

### IT's involvement

Only half of respondents consider that their IT department is “proactively engaged” in planning and introducing RM&C systems and processes.

### Systems and processes

Around a third of the top 100 still rely on fee-earners and secretaries to complete new client and new matter procedures and only 10% have



an integrated PMS or workflow solution for conflict checking.

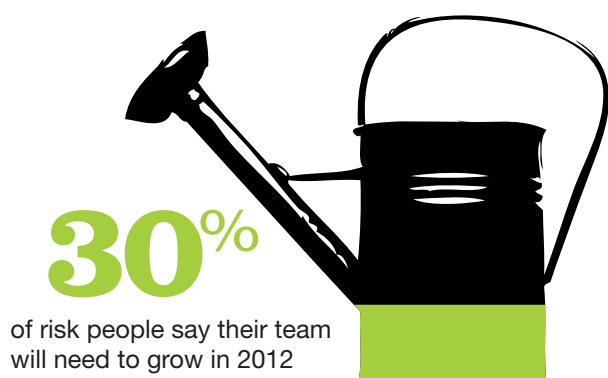
### Client contact

Less than half the RM&C teams in the top 100 have any direct client contact.

### Management engagement

Just 33% of respondents said their management team is “fully engaged” with and understands pertinent RM&C topics such as OFR.

*This is a selection of the information collected for the Risk & Compliance Index. For more, check out LSN's infographic, or contact Lockton or Kindleworth.*



**Click!** to download LSN's risk management infographic

## Research

# What's OFR going to do to your PII bill?

*We asked Lockton's professional indemnity insurance (PII) expert Steve Holland how ABSs and OFR will affect PII costs*

"Law firms in the top 100 continue to achieve the lowest rates for their PII programme.

"The top 100 has weathered the hardening professional indemnity market, which last year saw the total premium pot for the compulsory limit increase to £255m – despite a number of high-profile professional negligence claims against some of the larger law firms."

## How will ABSs affect legal insurance?

"Each ABS will have to be risk-assessed by the underwriter [but] the 'non-lawyer' ownership will not cause insurers too much concern, as [owners] will have had to demonstrate to the SRA that they are fit and proper.

"The real challenge for the insurer will be an ABS that creates a completely different business model in what they actually do. These multi-disciplinary practices [MDPs] will potentially bring together a variety of professional services, such as accountancy, surveyors or IFAs, to name but a few.

"Some insurers will have experience in underwriting these different types of professions and will be able to rate the firms accordingly. Others will have had the experience but may not have the appetite to insure these risks, due to their poor loss ratios on their portfolio of business. These ABSs will need to work carefully with their brokers to ensure that their insurers have the

right capability and experience to provide the correct coverage for the MDP."



## How will OFR affect the PII market?

"We believe that outcomes-focused regulation (OFR) will have a positive effect on the professional indemnity market for solicitors.

"OFR has raised the bar for risk management and made firms think more carefully about how they are going to manage their businesses, and provide demonstrable proof that they have the right systems and processes to deliver the right end result for their client.

"As always, there will not be an immediate cost saving in premiums, because of these enhanced risk management requirements – however, as improvements in claims records [grow], the premiums will be driven down."

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## INDUSTRY ANALYSIS INDEX

# Ready to comply?

In this issue of Briefing we get the low-down on tomorrow's legal business risks, solutions and techniques from the industry's leading firms.

Are you ready to push risk out of your life?

### New risk, new challenges



Bill Burch at Elite on managing risk in every part of today's legal business

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### Interview: Get your house in order



IntApp's Pat Archbold says law firm data must be put to better use in risk management

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### Case study: Outsourcing compliance



Morrisons' managing partner on how e-know.net's cloud IT delivers firm-wide compliance

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### Managing social media



Hannah Jones at Nikec Solutions asks: Is your firm in the dark about the risks of social media?

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### Hidden threats



That fax/copier could be a big security risk to your law firm, says Canon's Quentyn Taylor

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*Industry analysis*

# ew risks, new challenges

Bill Burch, vice-president for global sales at Elite, outlines how risk must now be managed in every part of today's legal business

**Risk in law firms isn't just for partners and risk managers to worry about. How to reduce and manage risk are occupying almost everyone's thoughts in senior law firm management.**

This is not how it was before the recession. Of course, law firms were concerned about risk before 2008. But now senior managers are starting to listen when told by their risk chiefs that there's a risk management challenge in every part of their business.

When you say risk, people's minds naturally turn to conflicts and so on, but there are many kinds of risk. Take data breaches and vulnerability – firms are under pressure from clients for transparency and exposure of data, such as on a client extranet, and acceding to those demands creates vulnerability.

Financial decisions in a firm aren't as easy as they used to be. Partners want to know more about how and why their firms are making

decisions, and they want more data. But, if you're delivering sensitive data to mobile devices and desktops, you're creating risk.

Overall, the pressure to push information into more hands means law firm have to understand the dangers – and find solutions – around the information.

## Risk and business development

Risk isn't just about how safe your information is. Law firms must be compliant with regulations and the law and even that is a more complex area than it was a year ago. At a commercial level, however, it's become even more interesting.

Clients are now putting a lot more pricing pressure on firms, which brings with it a different kind of risk: the risk of offering pricing options that might be going too far or

the risks around losing work or even a client. The knock-on effects of losing work can mean a vital partner or even a whole team leaving, which would have an enormous effect on the firm as a whole.

In addition, nowadays around one quarter of client business is earned through RFPs. If you're using alternative fees in conjunction with an RFP, are you using standard language? Are you incorporating risk into your business development? Once the work is won, you need to watch for commercial risk in delivering it. After you begin work, are you ensuring that you're compliant with the agreement? This can go wrong in many ways, from not being able to reach the stated goals, to doing the work but not correctly billing, to not running projects in the stated way.

Any of these behaviours will leave clients wondering: "If they can't even get this right..." And, with procurement departments increasingly in the mix in corporate client work, this could create a groundswell of negative feeling towards your firm.

## Technology and cultural change

We think technology is a major part of the solution to these risk challenges, but it's not the whole answer. Information has to be available and there's always going to be the risk of vulnerability, but it's possible to massively reduce those risks.

We've developed systems to allow web access, for example, to back-end information but, at the same time, found a variety of ways of keeping that information out of unauthorised hands. We've built a whole series of solutions that are designed to be the foundation of information security in the firm. We've also been working with law firms on their RFPs, helping them outline how they're

keeping clients' information safe and giving them solutions where they need them.

This is one of the reasons Thomson Reuters recently acquired FWBS's MatterSphere product. It has a tremendous ability for workflows and availability of information, but at the same time it's very secure.

When it comes to risk, workflows are a great way of enabling compliance. Some advanced firms operate a huge number of workflows that really enable compliance in a firm-wide way, and that also make RFPs much easier to



approach as a result.

The journey to solving the risk dilemma, in which you need ever more information but at the same time ensure that you're being more careful with that information, requires a mix of automated compliance and cultural change within firms. The former we can help with a great deal, but risk management heads will need to lead the charge on the latter. Those that do, however, will reap the benefits of a truly risk-aware law firm.

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*Interview With: Pat Archbold, IntApp*

## Get your house in order

IntApp's risk practice chief tells Briefing that law firms have a huge amount of data that must be put to better use in risk management

**Today's top law firms are walking in increasingly hot waters. The globalisation of the legal market, consolidation, expansion ambitions and increasing competition all bring challenges and opportunities – and a huge compliance and risk map.**

On top of that, UK firms have outcomes-focused regulation (OFR) to deal with. The only way to deal with these challenges – and simultaneously add to the bottom line – is to see the world in terms of information, not manual processes.

"The volume of business data that sits within a firm's system that's completely unleveraged is huge," says IntApp's Pat Archbold. "Law firms do a great job of getting the information they need to get the client on board and to get bills out – but for everything else there's plenty of room for improvement. And firms are going to keep getting bigger, so their compliance issues are going to become more complex."

Managing this complex web of risk has to be done with integrated technology, says Archbold – humans simply can't cope with the complexity, and cannot be relied upon to remember all the things they have to do. Even basic compliance elements such as conflict checking simply can't be scaled if they're being done manually, Archbold says.

The answer – workflows and automation – means getting in with IT, but that's not always easy; risk, beyond the essentials, can be a difficult sell when IT often has a huge list of other matters in the queue.

"Until a client or insurer makes a point about where the market trends are going, firms often resist change," Archbold says. "But don't wait for insurer and client pressure to create a fire drill – take the proactive steps now."

So, what can risk people do? Start by building forums for engagement, says Archbold. Working towards ISO 27001 can

help this happen, says Archbold, because it's in the standard to set up security forums, and risk can piggy-back on their creation to make more proactive risk-focused forums.

OFR will also drive the connection between risk and IT (and other departments), Archbold says. "It's an executive management issue. OFR is a different beast, because it asks that you demonstrate you have the systems and controls in place to meet the outcomes. It's not a tick-box system."

But what happens if you're just not big enough to handle big business standards like ISO 27001? If you're Clifford Chance and Allen & Overy, this isn't a big problem. A 200-lawyer firm, however, may not have the resources, says Archbold. This is why, he says, IntApp is working to create a venue for this dialogue and deliver more than just software. "The real shift that has to take place is a more proactive relationship between risk and IT," Archbold explains.

One way IntApp is helping this change happen is by sponsoring [the Law Firm Risk Roundtable initiative](#). This includes a consortium working group of law firm risk and IT leadership collaborating to develop risk response guidelines in response to evolving industry, client and regulatory pressures.

But in terms of what IT can do for risk management at a firm, that's thinking ahead of the pack, Archbold says. First, a firm has to start by getting much better at binding all its information together. "Understanding who's worked on which matter, what administrative staff has been assigned, who has been pitched to, as well as core data like the consistent updating of practice groups and certifications,

are all going to be increasingly important moving forward. Humans can't possibly track and update this information manually."

Doing this actually delivers value in profit-creating areas. For example, Firm X might want to be the best energy firm in the world, but if it isn't checking carefully and at many stages prior to client set-up or matter intake who in the firm is speaking to or pitching to which

*"OFR is an executive management issue. It's a different beast, because it asks that you demonstrate you have the systems and controls in place to meet the outcomes. It's not a tick-box system."*

Pat Archbold, vice-president of the Risk Management practice, IntApp

company, it could end up killing its chances of winning the best client it could have – just down to conflicts or information barriers. "That's when I say: 'Get that underlying data organised now to avoid head aches later,'" says Archbold.

This is the mission, should they choose to accept it, of the modern-day risk chief, he says, "because it's not just an IT issue and it's not just a risk issue – it's a business issue".

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**IntApp** helps firms manage risk  
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*Case study – e-know.net*

## outsourcing compliance

Briefing speaks to managing partner Paul Harvey about how Morrisons Solicitors found risk management nirvana in the cloud

**The new world of outcomes-focused regulation (OFR) is a more flexible but more uncertain one – but that needn't mean more effort when it comes to keeping IT systems and processes compliant.**

Paul Harvey is managing partner at the 110-strong Surrey firm Morrisons Solicitors – and for him the route to relatively painless IT compliance, and competitiveness, is through outsourcing.

“We’ve used IT to achieve both our compliance and productivity goals,” he says. “Outsourcing was the game-changing decision for us, because it means we now compete at a different level.

“For small to medium-size firms, unless they outsource I can’t see how they can stay in the game. We pay per user, so we always have the right capacity, and we use our IT projects to aid competitive advantage, drive efficiency and enhance the delivery of service to clients.”

Morrisons outsourced its IT to e-know.net in 2006, when, after significant growth, the cost of enabling more streamlined, advanced technology, such as case management and digital dictation, looked prohibitive. The firm is still growing – but with outsourced IT, adding new people, and even new businesses, is “easy to do and managed with a known cost”.

Law firm mergers are usually a risk black spot, but, says Harvey, issues in merging data and potential conflicts in new client lists are flagged early on by his IT monitoring systems, “which really helps during due diligence”.

“Having e-know.net run our IT enables us to integrate other practices very easily – eliminating risk and making us compliant from day one of the merger.”

Outsourcing every IT system in the firm – from hosting all the firm’s information to applications – also means Morrisons has a stable platform to develop workflows and

processes to manage risk in the same way the largest firms operate: with risk assessment and compliance processes delivered as automated functions. Morrisons doesn't need to worry about disaster recovery/business continuity, because that's also part of the deal.

But compliance isn't all down to IT – you've got to have the right attitude to risk management first. "We've reviewed all our procedures and used OFR as an opportunity to invigorate our file review process, and to ensure that we are providing the best information to our clients and to our fee-earners," Harvey says. Morrisons has put focus on conflict checking, "to ensure more accurate checks are carried out, and that these checks are run through not just our practice management system [PMS], but also our customer relationship management and other systems".

The firm is also LEXCEL and Quality Conveyancing Scheme accredited, but the required procedures and processes are now just "part of our general compliance and best practice manuals, available electronically across the firm".

Thinking strategically about risk also reduces Morrisons' insurance premiums. The key to managing risk, Harvey says, is to get it right at the beginning – "if you don't make mistakes at take-on, they don't come biting further down the line".

This attitude has impressed the firm's PI underwriters – when Harvey explained the firm's procedures to them, he says, "we achieved very favourable terms; we haven't been subject to the difficulties and increases many colleagues have". The firm's bank is also reassured – which "impacts our relationship in a very positive way", he says.

Morrisons has another trick up his sleeve when it comes to punching above its weight:

e-know.net is compliant with ISO 27001, an IT industry standard only a couple of the biggest law firms in the land can achieve on their own; but because e-know.net manages all Morrisons' data and systems, the firm's IT is also ISO 27001 compliant, something that plays well when pitching for new business with demanding clients.

Harvey is now looking to a technologically



enhanced future for Morrisons. The firm is already using IT to record actual time against estimates, and issue warnings if these are exceeded. In the future, Harvey wants to really mine the firm's data, using software to produce estimates based on actual previous data, "making fee estimates more accurate from the outset".

"It's all about improving client relationships," he says – and fewer surprises when the bill arrives is a great way to go about doing that.

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**e-know.net** and hosted IT.  
[www.e-know.net](http://www.e-know.net)



*Industry analysis*

# Managing social media

Does your firm have its head in the sand when it comes to the risks of social media and mobile devices? Hannah Jones at Nikec Solutions outlines the dangers, and some solutions

**Back in October 2011, in the distant land of Redditch, the SRA changed the regulatory focus for law firms from a rules-based approach to outcomes-focused regulation, or OFR. A few months on from its launch, we're seeing that OFR is no fairy tale.**

The more forward-thinking firms are looking at how technology can ease the burden of risk mitigation, especially technology-related risks. Some of these risk areas, such as social media, have in the past been almost unmanageable – but can now finally be tamed by sophisticated software solutions. Mobile working is another hot topic, with tablets and smartphones a challenging security area.

## Dealing with social media risk

Social media allows firms, at a relatively modest cost (aside from wages and time), to

communicate about their services to existing clients as well as prospects. Some firms have developed social media platforms as client portals, others have used similar platforms as a tool to communicate internally.

But social media is not at all without risk – see the list of key risks on the next page. A first step in countering these risks should always be to create a social media or acceptable use policy. After that, technology solutions can be used to enforce these policies, and reduce or even eliminate many of the risks.

Netbox Blue from Nikec Solutions is one such technology. This kind of solution can monitor posts being submitted from the firm's networks, from any device, to Facebook, Twitter or any other social media site, in real time, and match words and phrases that a law firm has identified in advance.

Technology like this can also add disclaimers to a Facebook post, for example, to signify that

the view represented is not the view of the organisation. A savvy law firm can also use this kind of technology to even enhance its social media presence – the disclaimer text can include a shortened URL link to a recent article by the firm, for example, or a sign-up sheet to an event being held by the firm.

Of course, you can also take this further: giving certain types of staff only read-only access to Facebook, for example; or you could segment your internet connection to give higher priority to business critical websites over sites that are bandwidth heavy, such as YouTube.

### Working with mobile working

Mobile working isn't a new concept – many firms have been successfully using Citrix and virtual private networks for years, for example, but never has it grown at such a rate, and the associated risks have taken on greater prominence.

With some law firms now providing iPads to partners, and IT directors being asked about BYOD (bring your own device), balancing lawyer productivity to meet client demands against the inherent risks of mobile technology has never been more critical. There's likely to be an even greater need for mobile working once London grinds to a halt for the Olympics.

But mobile devices can be brought to book. Technologies like our Netbox Blue solution can be installed as a software 'agent' on mobile devices that can apply the same access rights granted to corporate devices in the office. With updates from a central server when the device

### *Key risks around social media*

- Disclosure of confidential client information
- Reputational/brand damage
- Blurring of boundaries between personal and professional use
- Technological risks – security, spam malware etc
- Dissemination of misinformation
- Profane or abusive comments
- Bullying
- Sexual harassment
- Defamation
- Loss of workplace productivity

has network connectivity, mobile devices are automatically synchronised with any changes in policy.

So, it's not all a Grimm tale. Managing risk is a constant battle in a world that's constantly changing. Technology goes a long way to automating risk mitigation and, although it's not the answer to everything, it's a powerful addition to your armoury.

Click here to learn more about  
**Nikec Solutions**  
[netboxblue.com/cyberriskprofile](http://netboxblue.com/cyberriskprofile)



*Industry analysis*

# Hidden threats

That multifunction device in the corridor could be a serious security risk to your law firm, says Quentyn Taylor, director of information security for Canon Europe

**If you talk to any law firm manager, you're likely to hear the old maxim: 'People are my organisation's greatest asset'. Ask the same question of your IT team and the answer might be different – information is what makes any business operate successfully.**

**Both these are true in legal, and the protection of the information that firms hold is a key factor in their ability to retain client confidence and maintain future business.**

Law firms are now finally being more proactively pushed into managing information risk by the new outcomes-focused regulation (OFR) regime – and not a moment too soon, as continuing headlines detailing high-profile data losses still act as a constant warning that more can be done.

Whether these losses are accidental or a result of external influences such as hacking, the result is the same: embarrassment to both clients and firms, which can result in a damaged brand, heavy fines, potential bankruptcy and even imprisonment. To top it all, the EU is proposing to update its data protection legislation,

which could result (among other outcomes) in fines of up to 2% of global turnover for data breaches. Plus, [the ICO is proposing mandatory disclosure of data losses and compulsory audit powers](#).

For any other business, documents are one of the top three breach 'vectors' (routes of attack), according to [a report by the Digital Forensics Association](#) – so the level of risk to which the legal sector is exposing itself is high.

Security might be high on the agenda, but serious gaps still exist in law firms' policies.

IT networks are becoming ever more secure, but, for example, consumerisation of IT and the influx of employees using their own devices, such as smartphones and tablets, for work purposes make the network vulnerable again.

Consumerisation has had plenty of press, but another security gap in law firms hasn't received such close attention – multifunction devices (MFDs). In many cases, networked MFDs in law firms are left completely unprotected. Also, the management of the devices is often still handled outside IT/information security's remit, which means they can't enforce their normally strict procedures and policies on them – they are rarely controlled to the same degree as corporate email or web servers.

These devices are frequently shared across teams and projects (and even across firms in some 'managed office' situations), so the potential risks are extremely high. Anyone with access to such a device could copy a document left lying around and send it out of the firm (by eFax) without ever touching a PC or networked server, completely bypassing existing security solutions – either deliberately or accidentally.

There is, however, a lot you can do about this threat. Keyword recognition technology,

for example, can be used to automatically classify the data in the document when an MFD processes it – preventing any unauthorised use, such as copying or faxing. Such smart technology can prevent damaging incidents of data loss.

Defining an appropriate solution can be as simple as asking what information is leaking, how much is it costing the firm, why is it happening and how can it be prevented. Whatever they are, considering the potential damage, data loss solutions around print

*“Consumerisation has had plenty of press, but another security gap in law firms hasn't received such close attention – multifunction devices. In many cases, networked MFDs in law firms are left completely unprotected.”*

infrastructure should be at the top of the IT team's list of things to do – though it's also important to develop procedures and technologies that would fit in with other enterprise systems.

Protecting your firm's other greatest asset means looking at a complete flow of information – and being proactive about it is vital, because law firms are at a higher risk from data loss than many other businesses.

Click to learn how **Canon** can help reduce data leaks in your firm.

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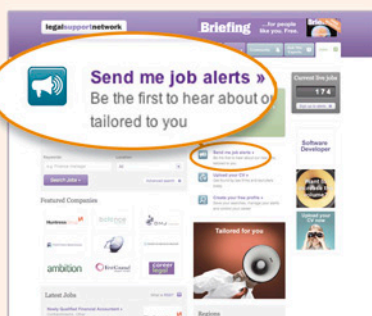
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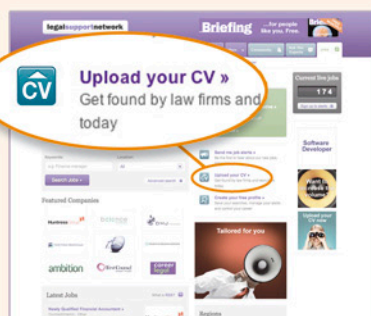
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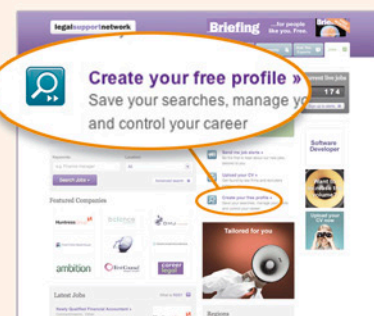
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