service levels at the outset, covering your own obligations as well as what you expect from the clients. So, for example, if your responsibilities are to include providing details of the type and frequency of communications, the client's obligations should include the provision of clear, timely and accurate instructions, prompt responses to requests for information and the provision of funds. You should set out the likely consequences if they do not comply with their obligations.

Managing clients' expectations is a crucial part of your role. It is therefore important that you are honest about the prospects of success, that you properly update your clients as the matter progresses and advise on the impact of any fresh evidence that might affect the merits and possible outcome of the case. Communicating in plain English is vital. Avoid using jargon and making assumptions that something is obvious and needs no further explanation when that might not be the case.

Keeping an accurate record of all work undertaken is essential to the maintenance of good client relations. Notes should be accurate and succinct, recording the date of the meeting or telephone attendance, those present, the salient points discussed along with the advice you have given. If necessary, follow up by letter or email, particularly if you are at a crucial stage, for example, discussing the terms of settlement.

Step 5: ending the retainer and file closure

Once your work is completed you should raise your final bill and account to the client for any monies due to them. This is a regulatory requirement and firms who fail to clear residual balances have found themselves before the Solicitors Disciplinary Tribunal.

As part of your file closure process you should carrying out the following tasks:

- report to the client on the final outcome of the case;
- return original documents or, if you are to retain them for safe-keeping, confirm the arrangements;
- explain your storage arrangements and destruction policy, plus steps that should be taken if the client requires their file or any documents from storage while they are being retained;
- confirm whether or not the client needs to review the matter at a future date and, if so, when and why – for example, if there is a future limitation date; and
- mark your file with a destruction date and archive it promptly.

Dealing with file closure procedures is equally as important as the client on-boarding process, but it is something that many firms struggle with, particularly when it comes to clearing small residual client account balances. It is much easier to sort these issues out while the case is still fresh in your mind, rather than several months later when the matter is likely to be long forgotten and, worse still, the original fee earner is possibly no longer at the firm.

Conclusion

The key to providing a good service rests in properly identifying your client and their objectives, managing their expectations and keeping them properly updated, particularly with regards to timescales, costs and merits.

Do not agree to act if you do not have the skills, time and resources to do so. Declining to act is likely to be preferable to agreeing to act where you have reservations, for example, that the client has unrealistic expectations, is likely to dispute your fees and has already sought advice from other solicitors.

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Coping with risk in a mid-size firm

Peter Scott

Levels of risk and strategies for dealing with them vary, depending on the size of the practice. Here, we look at the particular risks associated with medium-sized firms

What is a mid-size firm?

Defining a mid-size law firm is not easy, given that there are around 11,000 law firms in England and Wales and perceptions of size differ. For the purposes of this article, I have used two criteria and both relate to resources, the availability or scarcity of which are either enabling or limiting factors when considering how such firms are able to manage their risks. These criteria are:

1. the number of partners – when researching this, one definition suggested to me was that a mid-size firm is between five and 20 partners: a possible starting point, but on its own it may not necessarily accurately describe the kind of firm we are proposing to look at;
2. revenue and fee earners – the number of partners in a firm needs to be looked at in relation to the overall number of its lawyers and the revenue being generated by them. For example, if the leverage ratio of a 20-partner firm is one partner to four other fee earners, that firm could well have revenues which would place it comfortably in the top 100 law firms by turnover in the UK. Such a firm would not necessarily be regarded as mid-size.

Using these two criteria, for the purposes of this article, I am discussing firms:

- within the five to 20 partner range; and
- with revenues roughly between £5m and £20m (in 2017 a £20m turnover would have put a firm at 113 in the top 200).

Risk challenges for mid-size firms

We often hear advice given to law firms such as 'Get big, get niche or get out!' when discussing their future strategic options.

Similar advice might also apply when discussing risk management because, as with strategic positioning, those firms occupying the middle ground can get 'squeezed' when it comes to managing their risks.

Very large firms, because of their size and the revenues they generate, tend to have sufficient resources (finance and people) to manage their risks, although how well they do so is also likely to depend on the extent to which managing risk in its widest form (particularly when it relates to protecting reputation) is seen by those running such firms as a priority. As Cedric Lenoire, head of FM Global's business risk consulting division has said (as quoted in an article in *The Times*, 21 January 2013):

'It has got to make financial sense, but you have to see risk management as one of your strategic objectives. Business resilience is actually a competitive advantage.'

Large businesses (including large law firms) increasingly see risk management in those terms. I wonder how many mid-size firms think in a similar way?

To show their intent to manage the totality of their risks, large law firms have for some time been following their clients and appointing their own general counsel whose priorities are likely to closely follow those revealed by a survey carried out by Grant Thornton in 2015 which listed the changes being made by corporate general counsel in managing their regulatory risks.

Change	%
Strengthening policies and procedures	70%
Increasing education and training	60%
Engaging outside advisers/consultants	41%
Adding internal compliance personnel	36%
Subjecting vendors and suppliers to monitoring and audit	33%
Conducting more internal investigations	30%
Implementing software tools	28%
Repurposing internal audit towards regulatory matters	21%
Utilising data analytics	21%
Increasing actions against violators	9%

The percentages set against each topic are the percentages of those general counsels surveyed who had made those changes. Those actions could well be said to be examples of *best practice* to which large firms increasingly adhere as they take steps to more effectively manage their risks, in particular, risks to their reputations. Mid-size firms also need to aspire to and implement such changes as appropriate to the scope and nature of their businesses if they are to continue to practise compliantly and safely.

Many mid-size firms are the products of transformation processes from the small firms they were previously into the firms we now see. As they have continued to grow they have expanded their numbers of partners and other staff and often have more than one office, all of which factors increase risk. Mergers and acquisitions have also been a particular feature of growth within this group and merged firms (as well as the merger process itself) can also be a source of increased risk. However, internal cultures and attitudes to risk and the management and supervisory controls needed to adequately manage increasing risks may not necessarily have kept pace with their rate of growth. From observations it would seem that some firms in this group still retain their 'small firm mentalities' and try to manage their now larger businesses in the same way they did when they were smaller. Having a 'lean' management structure can be a good thing, but that is quite different to having inadequate management.

I still come across managing partners of mid-size firms who continue to carry heavy client workloads and who readily admit that they should instead be devoting all or most of their time to managing their firms, but fear what may happen when their terms of office end. Good risk management must, however, come from the top, and managing partners of mid-size firms who are seen to give greater priority to their client work than to management of their firms (including managing risk) are not providing the right example when leadership is needed to embed a risk culture.

The result is that often internal attitudes and the risk and compliance systems needed as firms grow in size are seemingly constantly having to play 'catch-up'. The following areas need to be prioritised:

- governance arrangements need to be appropriate to firm size;
- lawyers in management roles need to have the skills and knowledge to manage;
- teams of professional managers need to be in place to support the lawyers, not only risk managers but also for finance, human resources, IT, knowledge management and training – all of which are areas which can involve serious risks to a firm; and
- above all, as such firms expand their businesses, it is even more important that *knowledge is managed*, otherwise it will not be possible to manage a firm's risks. This touches every aspect of a firm, as shown in this paradigm.

The resource problem?

The same need to prioritise risk management applies equally to mid-size firms as to large firms because they have many of the same issues, but they do not have the same access to resources. This is often the justification given for not putting in place appropriate risk management. 'We can't afford to' needs to be met with the response 'Can you afford not to?'

Even though mid-size firms may have fewer resources than their larger brethren, I question whether the problem really is one of lack of resources, or whether it is more an unwillingness on the part of those running or owning such firms not wishing to invest in managing risk and/or a perception that they cannot afford to do so.

A *mindset* change is needed on the part of those running mid-size firms as they grow from small-firm beginnings (particularly following merger) to adapt themselves to the different needs of a larger firm.

A couple of examples illustrate the problem.

- The finance director of a firm at the upper end of mid-size told me that no non-fee-earning staff in any discipline could be recruited without the approval of an equity partners' meeting, because such roles were seen as 'non-productive' and to be avoided if at all possible. There was a mindset on the part of the partners which was stuck in the time when they had been a small firm and this was a typical example of the 'growing pains' experienced by some mid-size firms as they expand, but where the mindset of management and partners lags far behind.
- Another firm, also at the upper end of mid-size, asked for my advice in relation to a regulatory problem. The firm, though well managed in other respects, had no professional risk manager. Instead, it had a number of people (mainly partners) trying to get to grips with different areas of compliance, but lacking the time or enthusiasm to do so properly. Together we undertook a cost–benefit analysis, comparing the current cost of time involved and fee-earning work lost trying to manage compliance with the cost of employing a professional compliance officer. That analysis (and the scare they received from the particular regulatory problem!) convinced them they should recruit a professional manager, which they did.

How many mid-size law firms have suitably experienced professional risk managers who have overall responsibility for managing all risk areas? These risks include:

- regulatory risks;
- people risks (together with the human resources (HR) professionals);
- cyber risks (together with appropriate IT professionals);
- reputational risks (together with, for example, a reputational risk committee); and
- the processes and controls to manage the risks of negligence.

Instead, we often see that risk management is undertaken with no overall coordination by anyone, for example:

- a compliance officer for legal practice (usually a busy partner) spending a few hours a week (or at weekends) struggling to keep on top of all the problems arising, as well as the avalanche of new regulation;
- a money laundering reporting officer (often a busy property partner) who may or may not be well trained or knowledgeable about the latest AML requirements;
- someone (possibly another busy partner) dealing with data protection and struggling to cope with the EU General Data Protection Regulation;
- an HR manager managing people issues (but not necessarily partner-related 'people risk' issues as they are often 'off limits' to HR);
- an IT manager trying to ensure that the firm's IT systems are as robust as they need to be, but where neither adequate finance nor staff training to build awareness of cyber fraud are made available; and
- client and matter inception procedures being managed 'locally' in departments with no effective central control over the matters or clients taken on. (For the opposite approach, see the article in *Legal Compliance Bulletin* [2017] November, issue 52, p.10–12 by Peter Bennett of BWB LLP for an example of how professional indemnity, regulatory and reputational risks can be successfully managed in a mid-size firm, by risk assessing matters and clients at inception.)

Mid-size firms should, if they have not already done so, 'bite the bullet' and accept that they need to invest in risk management by:

- carrying out an audit of their risk and compliance management to see where gaps exist;
- examining what they will need to do if they are to fill any gaps revealed by that audit;
- undertaking a cost–benefit analysis to see the best way to achieve this; and
- considering how they can use IT to 'systemise' their risk and compliance monitoring to better capture knowledge required to more effectively manage risks.

On the last point, many mid-size firms have, over the past few years, invested heavily in new IT systems and they should consider how to make that investment work for them in better managing risk. Using IT innovatively can be a powerful (and cost-effective) tool to:

- create and maintain a central, up-to-date risk and compliance database;
- provide information access to everyone who needs it in relation to exposure to risk and how to manage it;
- embed into a firm's systems, its compliance and other risk management procedures, such as client and matter inception procedures;
- streamline the identification, recording, assessment and mitigation of compliance and other risks, including exceptions to compliance; and
- demonstrate to insurers, the Solicitors Regulation Authority and other regulators that a firm is effectively managing risks.

My observations are that many mid-size firms are more or less coping with managing their risks, but they could do so much better if they were to 'formalise' their risk management by implementing a realistic plan covering all aspects of risk, taking into account the resources available to them. But first they may need to change mindsets. This is likely to require:

- top-level buy-in – management must not only drive risk management, but also live it;
- investment in training and education programmes to build awareness and change mindsets;
- continuous and systematic monitoring and reporting so compliance becomes accepted as 'the norm'; and
- adopting a zero-tolerance approach, as in just do it! Risk management in mid-size firms (and indeed all firms) can never be a voluntary matter in today's world.

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