

# Marsh Specialty

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## Risk dimensions newsletter



Welcome to the fourth edition of our law firm newsletter. In this edition, we look at the effect of the pandemic on claims and notifications, and what this means for practitioners and firms.

### VERDICT ON PANDEMIC PROFESSIONAL INDEMNITY NOTIFICATIONS IS POSITIVE

**The COVID-19 pandemic has resulted in unprecedented challenges for law firms. However, Marsh Specialty's analysis of client professional indemnity notifications between 24 March and 1 October 2019, and the corresponding period in 2020, identifies persuasive evidence that most practitioners rose to the challenges the pandemic posed to their working lives, in exceptional ways.**

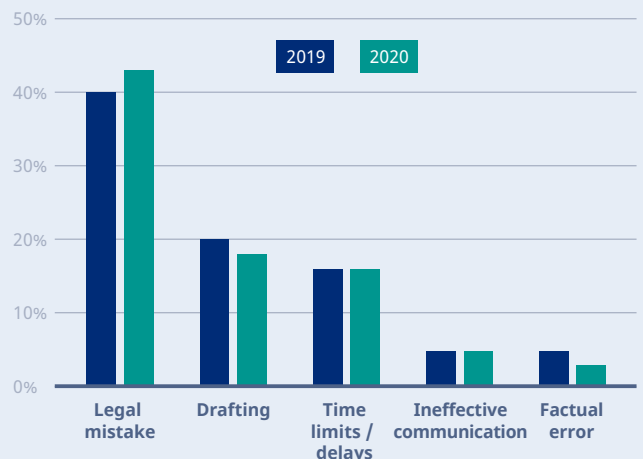
In the early days of the pandemic, Marsh saw the majority of clients in the legal sector take swift action to ensure their staff had updated supervision policies in place and to arrange remote risk training for their teams. According to the 2021 Legal Business Risk Survey, sponsored by Marsh, firms have observed the significance of their risk teams, with this sector experiencing overall growth during the last year.

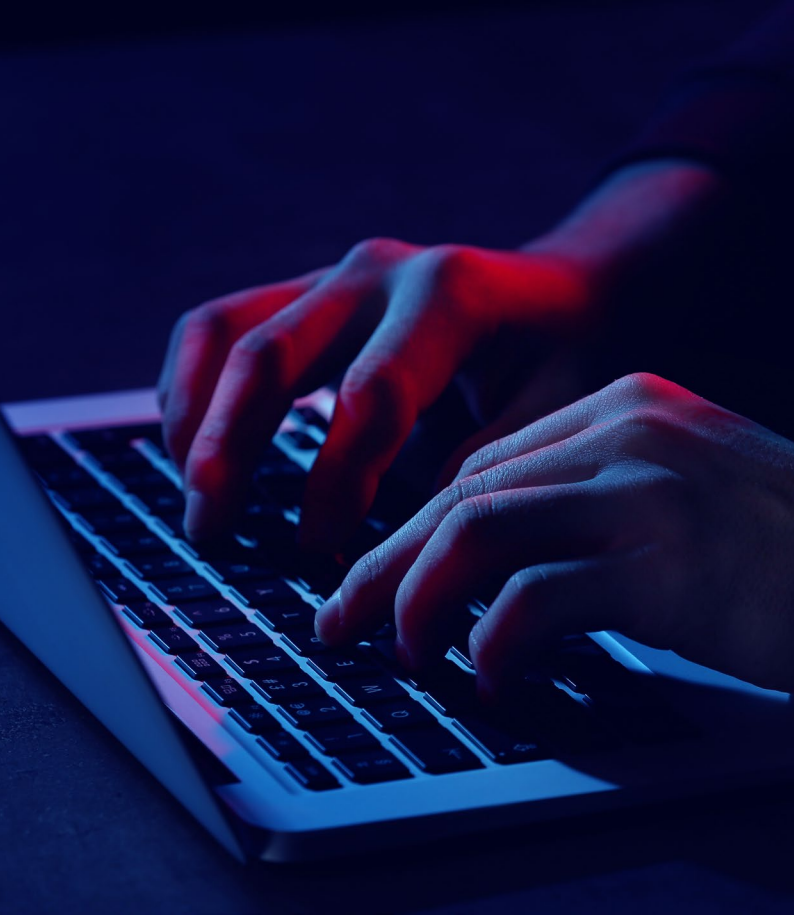
Marsh analysed approximately 1,000 professional indemnity notifications from 36 law firms, comprising top-100 UK firms and 11-plus partner firms. The analysis considered the practice area each notification had originated from, the type of work in question, and the actual error being notified. Contrary to the initial hypothesis that there would be an influx in notifications during the pandemic, a significant decrease of 18% was identified.

When considering particular practices, there were notable decreases in real estate notifications, in both the commercial and residential sectors. This is unremarkable, given the lockdown situation, and its initial impact in these areas. However, there were also notable reductions in personal injury litigation and private client notifications. Unfortunately, there was an upward trend in the area of commercial work, more specifically relating to contract, financial advice, and insolvency instructions. Notifications in this sector increased by 17% in the 2020 period.

In relation to potential error types, the usual suspects remained prevalent. On a pure count basis, there was no increase in specific errors. On a percentage breakdown between the periods, only a minimal increase was identified, as illustrated below.

PERCENTAGE OF NOTIFICATIONS BY ERROR TYPE





## THE PANDEMIC'S IMPACT ON SOLICITORS' CLAIMS

Over the last year, claims against real estate lawyers have continued to form a high proportion of the claims against solicitors. In particular, the profession is still experiencing a high volume of low-level claims arising from allegations of failures to advise on ground rent provisions in leases, and the availability of multiple dwelling relief, where properties have self-contained annexes.

**“ Phishing attacks are not the only worry: ransomware strikes are starting to affect law firms too.”**

Inevitably, lockdown and home working will give rise to increased exposures for law firms that will manifest themselves by way of claims, over the next few years. The obvious risks relate to the difficulties that remote working represents for supervisors, and an increased risk of cyber and data breaches.

Overall, there is reason for cautious optimism, as to what this data signifies for clients. While not all notifications materialise as soon as the particular work is completed, a vast amount do. Indeed, in the case of *Boxwood Leisure Ltd v Gleeson Construction Services Ltd & Anor* [2021] EWHC 947, the High Court refused to grant relief from sanctions to a party where the solicitor at fault attempted to rely heavily on pandemic restrictions as an excuse for a missed time limit.

With the exception of certain commercial work, no worrying trends in the data emerged from what was possibly the most challenging period of the pandemic in 2020, when practitioners were plunged into remote working overnight and firms had to work very hard to maintain service and quality for their clients. So far, in 2021, there has not been any obvious uptick in notifications, but the situation is being monitored closely.

Nevertheless, this does not mean that practitioners can sit back and relax. It is essential that firms and practitioners adapt their procedures and practices, as the country moves into the new “normal”. Flexible practices are filtering through the profession. Firms and practitioners must be on their guard to the consequences of the changes that are occurring organically and being implemented intentionally, as hybrid working environments increase.

Supervision practices require consideration, as procedures updated for the pandemic may no longer be suitable, when people are working in both the office and at home. As ever, those that continuously adapt to the environment and design and implement changes, are likely to come through this period most successfully.

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The anticipated exposures arising from IT security have already impacted the profession. The Solicitors Regulation Authority (SRA) data speaks for itself. In the first half of 2020, the SRA reported that nearly £2.5 million held by firms had been stolen by cybercriminals, representing a 300% increase on the same period the previous year. The regulator also said there had been a 37% rise in phishing scams during the first two months of the first national lockdown. There is no more up-to-date data available, but an improved picture is not anticipated.

Phishing attacks are not the only worry: ransomware strikes are starting to affect law firms too. The successful attack on a prominent barristers' chambers towards the end of last month, is an illustration of just how disruptive and damaging to a firm's reputation, such incidents can be.

### Medium-term risks: predictions versus actual

At the beginning of lockdown, DAC Beachcroft surveyed clients in relation to the medium-term risks they perceived would affect their practices. The firms surveyed correctly identified IT security as a major issue, but 50% said that real estate and conveyancing would be the most seriously impacted area, in terms of claims. One year on, has this prediction proved to be accurate?

Interestingly, an increase in property-related claims has not been observed, but a rise is expected over the next few months, as a result of the frenzy to complete purchases before the end of the stamp duty land tax concession. Mistakes are inevitable given the unprecedented pressure that conveyancing teams have experienced.

Likewise, an increase in missed deadlines is generally expected, but again, that has not emerged yet. There is speculation on whether the easing of lockdown and a return to office working may well reveal these issues, as teams start to interact, and supervisors review their colleagues' files.

## Full impact of lockdown is yet to be realised

In September 2020, when client positions were last reviewed, it was clear that the full impact of lockdown had not yet been felt. From experience, this remains the position. Claims against professionals are notoriously long tail and the full effect of the pandemic is only likely to be revealed over the next few years. This effect will be exacerbated if commentators are correct in their predictions that the country faces another recession.

For property lawyers, if a recession does come to pass, this will almost certainly result in another round of claims by lenders, as the property market falls, repossessions increase, and lenders start to see losses, as their security is devalued.

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