ISSUE NO.2

VERDICT

A SPECIALIST RISK PUBLICATION FOR THE LEGAL SECTOR

PRODUCT FOCUS

Getting the deal done: using environmental liability insurance strategically

FEATURE ARTICLES

DAC Beachcroft: The impact of Dreamvar v (1) Mishcon de Reya (2) Mary Monson Solicitors Limited and Maria Grondona v Stoffel & Co.

Weightmans: The SQE – will the reality live up to the promise?

GENDER PAY GAP - TIME TO GET SMARTER

Gallagher

Insurance | Risk Management | Consulting

ABOUT GALLAGHER

Founded by Arthur Gallagher in Chicago in 1927, Gallagher (NYSE: AJG) has grown to become one of the largest insurance brokerage, risk management, and human capital consultant companies in the world. With significant reach internationally, the group employs over 30,000 people and its global network provides services in more than 150 countries.

Gallagher's London divisions offer specialist insurance and risk management services. We provide bespoke policy wordings, programme design and risk placement solutions, and consulting support across a range of specialisms. We manage complex, large, global risks on a direct and wholesale basis and serve as primary access point to Lloyd's of London, London company markets, and international insurance markets.

WE HELP BUSINESSES GO BEYOND THEIR GOALS. IT'S THE GALLAGHER WAY.

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WITH AN INTRODUCTION BY BEN WATERTON

01. FOREWORD

Welcome to the latest edition of **VERDICT**, Gallagher's specialist risk publication for the legal sector.

As 2019 rapidly approaches, naturally thoughts turn to new resolutions, change, and betterment. In our sector, doing the best thing for our clients is paramount, so in this edition, we focus on the ways in which insurance can be used most effectively and to your clients' advantage. We also consider how 'doing the best thing' goes beyond clients and extends to employees, as we look at how changes to the way we work are accommodating a more equal, diverse and inclusive culture, and how smaller things, like the new qualification regime, can potentially benefit your workforce.

To start, our Environmental Impairment Liability (EIL) team explain how the use of EIL insurance is helping clients in the real estate and property sectors - and their lenders – to reduce long tail liabilities that can arise from environmental claims. Even with due diligence having been conducted, there is no guarantee that all known and unknown forms of contamination will have been identified, and consequently clients are taking the opportunity to protect themselves from these residual liabilities by transferring the risk to the market. Graeme Merry and Mathew Hussey give useful details about the policy and how it can help clients to successfully conclude property transactions when there are environmental risks to consider.

There was a ripple felt across the legal profession this year as 2018 saw lawyers and negligence insurers in the firing line with a raft of Court of Appeal decisions going against them. We are seeing that now, more than ever before, conveyancers are facing claims against them for negligence and breaches in authority, undertaking and trust. Ross Risby and Sarah Crowther from DAC Beachcroft LLP take a look at the underlying issues of two recent, high profile cases and consider what steps could have been taken to mitigate associated risks, and how to avoid the same pitfalls.

Certainly another hot topic for everyone this year was the gender pay gap, which in most cases, has highlighted the disparity of women in senior positions. With businesses across the UK making commitments to address this, Katherine Murray, HR Consultant at Gallagher Benefit Services UK, gives practical advice about taking a long term view and gives her top tips on how law firms should best prepare for the 2019 Gender Pay Gap Reporting.

Finally, I would like to take this opportunity to wish everyone a happy holiday and New Year. We hope you enjoy the latest edition of **VERDICT** and we look forward to working with you in the future.

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ABOUT GALLAGHER'S LAW PRACTICE

Gallagher, one of the world's largest insurance brokers, provides specialist risk and insurance solutions to professional services firms, and has a track record of working with some of the UK's leading law firms.

We recognise that each industry has nuances when it comes to risk, which means that off-the-shelf insurance products are rarely the right choice. Gallagher organises itself into specialist industry practice groups to ensure that we take a holistic view of risk. We look at risk across all aspects of an industry and then build specific insurance products or risk management solutions around the client in question, from Professional Indemnity and Management Liability, through to Cyber and Crisis Management, Property, Liability, Employee Benefits, and General Insurances. We also help keep our law firm clients up to date with the latest insurance products and trends – helping them keep their own clients one step ahead when it comes to risk.

This means our clients have confidence that their risk profile is properly understood, and that their insurance programme is tailored entirely around their specific needs. Our aim is simple – to provide our law firm clients with specialist insurance solutions backed by great services and support from our experienced team of brokers, risk consultants and claims experts.

02. GETTING THE DEAL DONE: USING ENVIRONMENTAL LIABILITY INSURANCE STRATEGICALLY

The changing risks

The risk of landowners having to pay for the clean-up of their land and meet third party claims for pollution emanating from their sites - even where they were not the original polluters - has increased as a result of environmental legislation. Other parties, such as funders, developers and tenants of real estate are also facing increased risks, largely due to increasing contractual allocation of environmental liabilities in property transaction and development agreements. In this article, Gallagher's Environmental team look at the insurance options available to protect parties against transaction-related pollution liabilities.

Whilst the frequency of environmental claims and regulatory actions for contaminated land clean-up remains relatively low, when they do arise, the costs and losses can be significant, especially when rental loss, consequential losses, legal costs and management time costs are taken into account.

Environmental due diligence has consequently become a routine exercise during property transactions. However, whilst the Phase I and/or Phase 2 assessments conducted by consultants provide important information, they are rarely conclusive (often due to tight timescales, access limitations, etc.) and usually indicate some residual environmental risk associated with known and unknown historic contamination at the property.

This residual risk is frequently transacted along with the real estate, increasingly by means of extensive environmental provisions contained in sale/lease agreements. The traditional approach has been to 'take a view' on this residual liability, and negotiate a price reduction based on a best guess estimate of the liability and/or to rely on the professional indemnity insurance cover of the consultant.

However, neither approach provides much in the way of effective long-term protection against potential environmental claims and regulatory actions or the blighting impact of pollution on an asset's future marketability. In addition, disagreements between seller and buyer on the potential risks and costs of environmental liabilities frequently occur and can result in deals stalling, or ultimately collapsing. Yet there are potential solutions available for your clients conducting these transactions.

The role of insurance in deal closure

Environmental liability insurance is increasingly being used to facilitate property transactions, by providing robust financial protection against known and unknown environmental risks and enhancing the value of assets for a defined price that can be factored into the transaction value.

In doing so, the environmental risks are transferred to an insurance company that is strictly controlled by a regulatory authority, and has a strong credit rating. Opportunities in environmental insurance are at an all-time high with new insurers increasing competition on costs, providing wider cover and offering greater capacity. A further comfort is the fact that the insurance industry is one the most regulated industries for the transfer of liability; few other companies have specific requirements to keep long-term financial reserves in place for potential environmental liabilities. This means that transferring these risks to the insurance market is a robust and reliable solution.

Case Study

Our pension fund client was purchasing a large retail park, constructed on a former industrial site. The site had been extensively investigated and remediated prior to development, but the environmental due diligence revealed concerns over the extent of unknown residual contamination at the site and, in particular, the long-term risks associated with historic solvent contamination migrating from the site in groundwater. Under the terms of the sale agreement, our client was required to assume all environmental liabilities associated with new and historic contamination at the site, so the transaction was stalled, owing to the environmental concerns raised by the due diligence.

Gallagher's environmental team was able to negotiate and place, at short notice, a long-term environmental insurance policy covering both the known and unknown historical contamination risks associated with the site. Policy coverage included liabilities assumed under the sale agreement and loss of rental income. The total cost of the policy was a tiny proportion of the transaction value, but provided the protection necessary to enable our client to successfully conclude the transaction.

Range of benefits

Crucially, environmental insurance policies can provide cover which includes protection against change in law. Polices can cover third-party and regulatory claims and can include consequential loss, property damage, bodily injury and remediation costs, technical and legal defence costs. Cover can be extended to both the vendor and the purchaser, funders and tenants with relative ease.

Significant commercial benefits that your clients could gain from an environmental insurance policy may include:

- Achieving maximum asset value for sales
- Long-term policies that can be transferred with site ownership with assignable policies
- Accounting provisions - insurance cover for a potential liability can improve a company's profit/loss sheet
- High credit rating and protection can secure funders and, in some instances, reduce the level of the funder's risk rating and therefore loan interest rates
- A long-term and sustainable approach - the insurance remains intact even if a member of the project becomes insolvent
- Insurance policies are based on financial loss occurring and streamline the process should a claim occur, instead of chasing multiple parties.

Growing awareness of the true financial impact of environmental liabilities, in terms of costs, losses and blighted property values, and the ability to obtain cost-effective long-term protection against such liabilities has resulted in a significant increase in the number of companies routinely using environmental insurance to facilitate property transactions where environmental risks are present.

With capacity increasing in the insurance market for these specialist risks, now is a good time to test the market, and see how this product can be strategically utilised for the benefit of your clients and their transactions.

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03. THE IMPACT OF DREAMVAR V (1) MISHCON DE REYA (2) MARY MONSON SOLICITORS LIMITED AND MARIA GRONDONA V STOFFEL & CO.

Following two Court of Appeal decisions this year which have caused disquiet in the profession, particularly amongst conveyancers and their insurers, Gallagher has asked DAC Beachcroft LLP to give us their views. In this article, Ross Risby and Sarah Crowther examine five key issues which arose in **Dreamvar v (1) Mishcon de Reya (2) Mary Monson Solicitors Limited** and **Maria Grondona v Stoffel & Co.** and consider what, if any, steps can be taken to mitigate the associated risks.

Overview

Dreamvar was heard in the Court of Appeal with P&P Property v Owen White & Catlin LLP. Both cases concerned fraudsters, posing as owners of properties, who absconded with the sale proceeds leaving the purchaser without title. The purchasers, Dreamvar and P&P, who were the victims of the frauds, brought claims against the solicitors involved in the transactions for negligence, breach of warranty of authority, breach of undertaking and breach of trust.

In Grondona the claimant was a purchaser who had made misrepresentations to her lender to secure funding. Her solicitor (who was also instructed by the lender) failed to register the transfer of title to the claimant and failed to register the lender's charge. When the lender sought judgment against the claimant following her default on the payments, the claimant brought a claim against her former solicitors for failing to register the transfer of title.

Issue 1 - Client identification and anti-money laundering

In Dreamvar and P&P, Mary Monson Solicitors ("MMS") and Owen White & Catlin ("OWC") respectively were the solicitors instructed by the purported vendors of properties. In fact, MMS and OWC were instructed by fraudsters who did not own the properties in question. This was not picked up in MMS and OWC's client identification procedures; in each case the client identity checks had been inadequate and triggers which indicated that enhanced or additional checks were required had been overlooked.

The basis of Dreamvar and P&P's claims of negligence against the sellers' solicitors, who of course didn't represent Dreamvar/P&P, was that those solicitors owed them duties of care when carrying out identity checks on their clients (the sellers). Although the client identity checks fell short, the Court of Appeal found that no general duty of care was owed by sellers' solicitors to a purchaser with respect to the adequacy of the identification checks that were undertaken.

This serves as a reminder as to the importance of robust client identification and anti-money laundering checks. Whilst liability in this instance was not made out, solicitors who fail to comply with the regulations may ultimately find themselves in serious difficulties with the courts and their regulators.

Issue 2 - Breach of trust / Relief under section 61 Trustee Act 1925

Dreamvar had instructed Mischon de Reya ("Mishcon") to act for it in the purchase of the property. Mishcon conceded that it was liable to its purchaser client, Dreamvar, for breach of trust for transferring completion funds in a fraudulent transaction.

Mishcon sought relief under section 61 of the Trustee Act 1925 on the basis that it had "acted honestly and, reasonably and ought fairly to be excused" for the breach of trust. Perhaps surprisingly, Mishcon was denied relief under s.61 primarily it appears because the firm had professional indemnity insurance. This is the most concerning aspect of the Dreamvar decision for solicitors (and their insurers) and effectively means that conveyancing solicitors are underwriting their clients' transactions on a strict liability basis.

Given the approach taken by the Court in this case, it is more important than ever that solicitors take all possible steps to identify fraudulent transactions before they are entered into, with each transaction being risk assessed, on an ongoing basis.

Issue 3 - Undertakings

Completion of the conveyancing transactions in P&P and Dreamvar took place in accordance with the Law Society Code for Completion by Post (2011) ("the Code"). Under the Code, a seller's solicitor undertakes to 'have the seller's authority to receive purchase monies on completion'. A key question for the Court, therefore, was whether 'seller' meant either the true owner of the property, or the fraudster posing as the true owner. The Court of Appeal found that there had been a breach of undertaking, as the seller's solicitors did not have the true owner's authority.

This element of the Court of Appeal's decision highlights the importance of practitioners understanding the extent of the undertakings they give. In this context, ensuring that the true identity of a client is known was critical to compliance with the undertakings in the Code.

Issue 4 - Breach of warranty of authority / reliance

P&P appealed the first instance decision that the seller's solicitors had not acted in breach of warranty of authority. The Court of Appeal decided that in executing and exchanging contracts, the seller's solicitors had represented that they had authority on behalf of the true owner of the property, as named in the contract for sale. Nevertheless, despite eventually establishing that there had been a breach, P&P's claim for breach of warranty of authority ultimately failed, as they could not show reliance on that warranty.

It is critical that the extent of a warranty given by a solicitor is clear to all parties to a transaction. This applies to all types of work, not just conveyancing. Solicitors facing an allegation of breach of warranty of authority should look carefully at whether there are any reliance arguments available to defeat the claim.

Issue 5 – Claimant dishonesty

In Grondona, the lender who provided finance for the claimant's purchase of the property was unaware that the claimant had an arrangement with the seller whereby: (i) the mortgage loan would be in the claimant's name, but that the payments would be made by the seller; and (ii) on the sale of the property, the claimant would take 50% of the net profits.

Despite the claimant having participated in a fraud against the lender, her solicitor (who had failed to register the transfer of title) was not able to avail itself of the illegality defence (ex turpi causa) in defending the negligence claim made against them for failing to register the transfer. The Court of Appeal found that it was not in the public interest to allow solicitors to avoid their professional obligations simply because "two of the clients for whom they act are involved in making misrepresentations to the mortgage financier". Conversely, it was in the public interest to ensure that solicitors' clients were entitled to seek remedies for negligence and breach of contract; it would have been disproportionate to deny Ms Grondona this right when her illegal conduct was irrelevant to her solicitor's obligation to ensure that her title was registered.

Although the fact of the claimant's dishonesty was of little assistance to the solicitor in this case, it is essential that solicitors have appropriate risk management, training and reporting processes in place to identify and stop frauds before they occur.

Comment

The practical effect of these decisions is that solicitors and their professional indemnity insurers are essentially 'underwriting' property transactions - simply because they have the means to compensate victims of fraud. These cases demonstrate that solicitors continue to face an uphill struggle in defending claims arising from conveyancing and highlight the lengths to which the Court is prepared to go to ensure that solicitors' clients' rights to remedies are preserved. As a result, the need for stringent risk management procedures has never been greater, particularly for conveyancers.

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DAC Beachcroft LLP is an international law firm headquartered in London, United Kingdom. It has around 1,400 lawyers across the UK, Europe, Asia-Pacific, Latin America and North America. It provides a full-service claims, commercial, risk, advisory and transactional capability, primarily in health, insurance and real estate.

04. GENDER PAY: TIME TO GET SMARTER

In this article, Katherine Murray, HR Consultant at Gallagher Benefit Services UK, looks at how law firms need to take the long view when it comes to their HR plans in the wake of the 2018 gender pay gap reporting requirement.

If you read nothing else, read this

- Research shows it takes 2-3 years[1] to see the impact of HR initiatives in an organisation and, hence, an impact on gender pay metrics. So, firms need to take a long-term view with regards to gender pay gap reporting, and in discussions with senior management.
- The legal profession – as with other industry sectors – needs to look at the ways and means to ensure a more equal mixed cohort at senior management level.
- This involves rethinking policies and practices to ensure equality of opportunity for women.
- It also involves rethinking organisational culture in the legal sector: tearing up the traditional rule-book founded in the long-hours and hierarchical environment, and replacing it with a much more flexible approach that supports work-life balance.

It is fair to say that this year's inaugural gender pay gap reporting created noise across all industry sectors, not just the legal profession – and there is every chance 2019 will not be much different. In some cases, the gap might even be wider. Most companies knew they could not magic change for the better - but this has never been about overnight transformation. It's about identifying the problem, articulating the solution, then taking a long-term view.

Now is the time – a whole four months before the next reporting deadline – to think about getting your firm's metrics sorted and coming up with a watertight supporting narrative that is capable of walking the talk. Importantly, it needs to build on the story the firm already communicated to employees and stakeholders earlier this year, and ultimately answering the question of how the firm will demonstrate commitment to gender pay goals. Plus, if there is a widening of the pay gap, how is the firm going to explain this?

Mixed cohorts, not quotients

The problem in the legal profession is actually not to do with female representation in the workforce. Indeed women make up 48% of all lawyers in law firms and 47% of the UK workforce[2]. Seniority, however, introduces the disparity, with women making up 59% of non-partner solicitors and the larger law firms (with 50 plus partners), showing women make up 29% of partners.

"The challenge is to ensure a more equal mixed cohort at a senior level, without resorting to quotients: the latter simply isn't in the spirit of equality."

This will involve more aggressive talent and succession management. Firms will need a fair process for determining early on which individuals (men and women) they are going to consider for key management roles. Then, the firm will need to set out how they plan to grow the capabilities of these individuals, facilitating opportunities for lateral moves with a view to achieving a more equal state over time.

50/50 male/female representation at the top is not necessarily the goal here. Instead, it's about upping the ante to help grow opportunities for the right females.

Rethink policies & practices

It will undoubtedly necessitate changes to HR policies and practices to ensure that talent and succession planning is done in a way that appeals to women as well as men.

Law firms will need to look at how they leverage their internal networks in order to grow the knowledge base of female employees and ensure 'stickiness' within the organisation. This might involve creating an informal set of networking opportunities for women, focused on areas such as new business, and getting to know people and opportunities in other departments.

As part of this, consider establishing mentoring groups to help women build their personal brand and presence across the business, paving the way for potential cross-departmental transfers in the future.

Rethink organisational culture

This is about systematic change at a top line level. The long hours and hierarchical culture which tend to be broadly typical of the legal profession has to be addressed, with a move more towards working through a series of key steps in order to get to partner (as opposed to a process partly based on being 'seen' and 'heard').

Smarter organisations are taking this as an opportunity to rethink organisational culture, in terms of career frameworks and pathways but also in terms of driving a more flexible working environment. The goal is to use these changes as a segue into transforming the traditional senior management view of the career process.

The big challenge for the legal profession is to continue to meet client needs whilst providing greater flexibility to the workforce.

Think long-term

The reality is that any HR initiatives will take at least 2-3 years to impact gender pay metrics and deliver meaningful results. A long-term view is essential, both in gender pay gap reporting and in discussions with senior management.

Accept that your firm is not necessarily going to shift the dial this year or next, but that foundations have been laid for the future. Only then will the firm be in a position in future to say with confidence that it helped increase senior management capabilities and taken significant strides to close the gender pay gap.

TO FIND OUT MORE›

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1 Reward strategy: Ten common mistakes, Institute for Employment Studies (2000)
2 How diverse are law firms? Solicitors Regulation Authority (Aug 2017) http://www.sra.org.uk/solicitors/diversity-toolkit/diverse-law-firms.page

Top tips to prepare for 2019's Gender Pay Gap Reporting

Do

- ✓ Publish your gender pay statistics and narrative by 5 April 2019 latest. Remember, you can publish any time within 12 months of the initial snapshot date.
- ✓ Review pay differentials through different lenses – age, occupation, length of service, part-time vs full time pay.
- ✓ Adopt in-depth analyses to identify root causes.
- ✓ Publish a new supporting narrative in 2019, one that builds on the story communicated this year and demonstrates real commitment. The challenge this time might be explaining any widening of the pay gap.
- ✓ Put in place processes that allow for equality of talent and succession management, identifying men and women with senior management potential at an early stage and tailoring the support they need to grow their capabilities.
- ✓ Create internal women's interest networks to support personal and professional development.
- ✓ Communicate an authentic future-looking action plan, including a focus on talent / succession management, HR and Reward policies and practices, and flexible working.

Don't

- ✗ Omit your partner pay statistics this time. Although the legal profession - along with other industries - was not obliged to included partnership pay statistics in the last round of reporting, the Business, Energy and Industrial Strategy Committee subsequently criticised the legal sector specifically for this practice, recommending that such data be included in next year's reports.
- ✗ Forget your internal audiences - most crucially your female employees. Consider them as much as your external audience, as their engagement levels could be significant. On that note, it's crucial to get senior management buy-in to ensure messages are cascaded down the organisation.
- ✗ Forget to define the remedial actions that will help narrow the gender pay gap over time. Position these in your narrative in a way that does not come across as being defensive.

05. INSURANCE FOR MERGER & ACQUISITIONS (M&A)TRANSACTIONS

Warranty & Indemnity (W&I) insurance is now a vital ingredient in any M&A transaction, particularly in the real estate sector. Sellers have now become accustomed to the product as it negates the need for escrow and allows for their clean exit. For a buyer, the W&I policy gives them protection (in the form of a reputable insurance policy) in case of a breach of warranty by the seller.

It is paramount for lawyers to be kept abreast of W&I enhancements and new levels of cover that have recently become available. Sticking points, such as known tax issues, might have previously derailed deals; but now these matters can often be wrapped into a W&I policy for no extra cost. Law firms act as crucial intermediaries between client and broker, due to their closeness with SPA negotiations. It is important that the legal team know who to contact in the event of a seller being asked to provide a large escrow or indemnity by the buyer – to not suggest an insurance route might be deemed negligent, as a W&I policy could result in a much smaller cost to a client than paying out themselves for a breach of warranty.

TO FIND OUT MORE›

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Real Estate project lifecycle & utilisation of W&I

Feasibility Analysis, Financing and Acquisition

- Buy-side transactional risks
- Lender conditions
- Legal indemnity and challenges to title

Disposal or Demolition

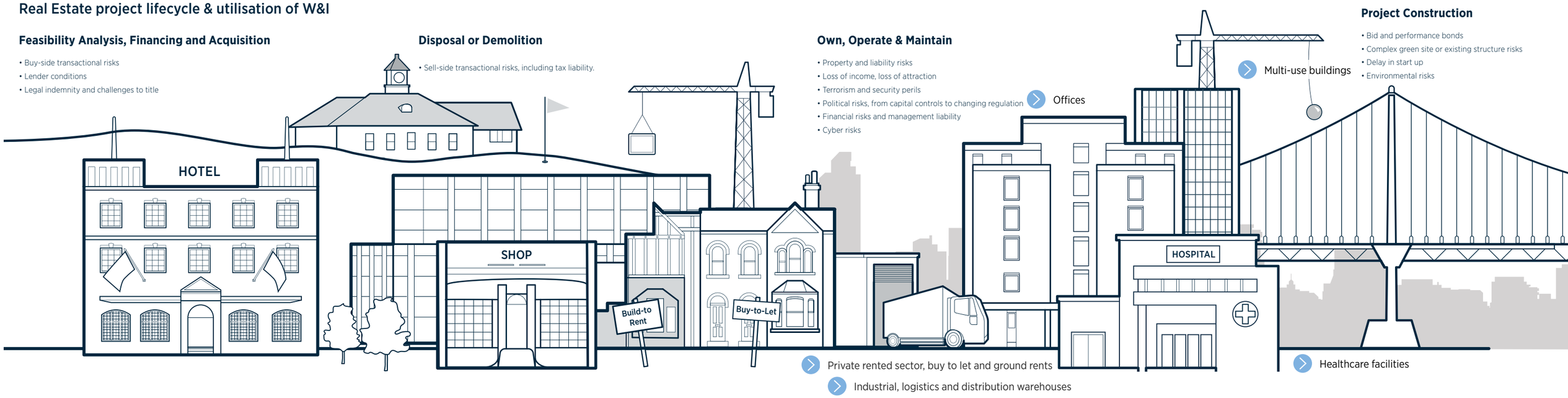
- Sell-side transactional risks, including tax liability.

Own, Operate & Maintain

- Property and liability risks
- Loss of income, loss of attraction
- Terrorism and security perils
- Political risks, from capital controls to changing regulation
- Financial risks and management liability
- Cyber risks

Project Construction

- Bid and performance bonds
- Complex green site or existing structure risks
- Delay in start up
- Environmental risks



W&I: Step by Step

Asset Marketed

Initial Review of asset

Share deal: Gallagher will provide advice and guidance on the most appropriate diligence approach needed to obtain W&I insurance so that the seller can limit their liability to as low as £1. Gallagher will review any potential title issues and provide indications for cover.

Sale Agreement drafted

Share deal: Gallagher will review the early draft set of warranties, discuss with the insurance market and provide a full report/ recommendation as to which insurer to proceed with based on coverage/ price and ability to be commercial/ hit tight timelines

Final Bid / offer submitted

Attaching the W&I policy to the final bid will make the offer much more attractive to the seller and may form the competitive component that is required to edge into exclusivity

Exclusivity and Due diligence Process

Share deal: Gallagher will review the draft DD reports with the selected insurer and provide a more comprehensive coverage position, which may include affirmative cover for known risks that have arisen during the diligence process. Gallagher also have the capability of undertaking specific insurance DD if that is required.

Any title issues flagged within the DD will be reviewed and options to protect your asset will be provided, giving comfort to you and lenders.

Sale Purchase Agreement negotiations

Share deal: Gallagher will work with the insurer and the lawyers to make sure that as many warranties as possible are covered as drafted. Any type of property transaction: Fundamental warranties can be covered under a standalone title policy to the full value of the transaction.

Property Insurance negotiated

Gallagher will provide a review of the following property insurances that the target currently has in place:

- Property damage
- Loss of rent
- Liability
- Terrorism
- Engineering
- Any other relevant covers.

Completion

06. THE SQE – WILL THE REALITY LIVE UP TO THE PROMISE?

Most lawyers cannot fail to have noticed that major changes are afoot in the legal profession. In this article, Deborah Sullivan from Weightmans explores how the Solicitors Regulation Authority (SRA) is radically reforming qualification requirements. In this article, we look at the Solicitors Qualifying Exam (SQE) and consider whether it fulfils the SRA's aims.

SQE – What is it?

The new form of assessment, which is due to be introduced in autumn 2021, will require candidates to take two stages of the new 'super exam': SQE1 and SQE2.

- SQE1 will test legal knowledge and be an academic exam, mainly multiple-choice, to be taken around the time of graduating from a degree or equivalent in any subject.
- SQE2 will be a practical skills examination to be taken, most likely, after completing two years of work experience.

Candidates will have to undertake a minimum of two years of legal work experience, which cannot comprise any more than four separate placements within that period.

The main differences between the SQE and the existing system of qualification are:

- the candidate's degree/equivalent need not be in Law;
- preparatory courses for the SQE will not be required or specified by the SRA; and
- the requirement to complete a formal training contract has been abolished. Prospective lawyers can gain the requisite 24 months of work experience in four ways: a training contract; as an apprentice or paralegal; as a student at a law clinic and through a sandwich placement.

Kaplan Financial Limited may have won an eight-year contract to run the SQE on behalf of the SRA, but it will not provide training.

Why the change?

When consulting about the proposed SQE, the SRA outlined three reasons for introducing the new qualification model:

1. to provide 'a more reliable and rigorous test of competence than is possible at present';
2. to introduce 'transparency and competitive pressure to drive up standards and reduce cost;' and
3. to 'remove the LPC gamble in which some students pay up to £15,000 for an LPC in the hope of securing a training contract.'

Higher quality?

According to the SRA, the number of institutions currently involved in evaluating aspiring solicitors makes it difficult to ensure that all new entrants to the profession are assessed to the same standard. The thinking behind the SQE is, in part, that all trainee solicitors, no matter which route they take to enter the profession, should sit the same qualifying exam, thus ensuring consistency and high standards across the board and silencing the notion that one route to qualification is better than another.

In terms of what is currently on offer, the SRA may well have a point. During the period September 2015 to August 2016, pass rates recorded by the LPC providers ranged from 100% to 30%. No doubt that range is the result of many variables. Did a difference in the rigour of assessment play a role? It is impossible to know.

Most commentators agree that the present system is not ideal but there is widespread scepticism as to whether the SQE will improve standards, as the SRA suggests it will.

The principle of all prospective lawyers sitting the same exam appears sound. The SQE will ensure that all successful candidates have achieved a guaranteed level of knowledge. It will also assist firms in benchmarking the competency of NQ job applicants. Objective data about SQE results will also be provided to organisations, which can then place an individual set of results in context.

Much of the current concern about the SQE centres around whether it will be demanding enough. Many observers are not persuaded that the use of multiple choice questions offers a rigorous means of assessment. There is also concern about the fact that the requirement for students to have an undergraduate law degree or conversion course has been dropped. And there is speculation that the reforms could lead to a 'two tier' profession, split between those who have taken the SQE preparatory courses and those who have not.

It is difficult to see how the above concerns can be evaluated until candidates start to filter through from the SQE into employment. Ultimately, the proof of the pudding will be in the eating.

Unlike the LPC, there is the additional issue that the current proposals for the SQE make no provision for elective topics to be examined. City firms have already expressed concern that future solicitors need some tailored academic training to prepare them for their roles, which the SQE will not offer. It is understood that the City of London Law Society has mooted the idea of prospective solicitors getting a 'City specific' background by embarking on 'LPC or GDL equivalents' on top of the SQE.

Less cost?

One of the more positive features of the SQE is that candidates do not have to commit to funding the entire cost of qualification in one go. Those who fall at the first hurdle and do not pass SQE1 can give up and not incur the cost of SQE2. However, another issue that has plagued the SQE is whether it really will be cheaper overall than the current system of qualification.

On 8 November 2018, the SRA announced what it is terming an indicative cost for the SRA assessments. For the SQE1 the fee range estimate is between £1,100 and £1,650 and for the SQE2, the estimate is a fee range of £1,900 and £2,850.

The official Law Society line at the moment is that the eventual fee may be inside or outside the estimated range. So, hardly crystal clear.

Potential entrants to the profession also need to bear in mind that there will also be an extra cost for preparatory courses for both SQE1 and SQE2. Whilst some universities plan to incorporate SQE1 preparation in their undergraduate LLB programme, for many candidates, there will be an additional fee.

There is a dearth of data at the moment as to what Law schools are likely to charge for those courses, but some commentators suspect that they are likely to charge as much as they do currently for the Graduate Diploma in Law.

Ultimately, until the development and testing of the assessments is completed, these costs cannot be confirmed.

Better access?

By opening up more routes to qualifications, the SRA aimed to increase access to the profession. The tiered system of paying for the assessments and the abandonment of the compulsory preparatory course might well encourage more people considering a career in law. However, the Law Society's Junior Lawyers Division (JLD) has expressed concern that, whilst the preparatory course is not mandatory, most students will engage in a programme of study to assist them in passing the assessment, leaving those unable to afford a course at a disadvantage.

A further concern is that existing loans would not cover the SQE assessment, as they have no course attached and would not cover any preparatory courses as they are not required. The Law Society made the SRA and the LSB aware of the potential for negative impacts, particularly on social mobility because of this and is, apparently, looking for solutions.

It is early days to inform a definite view as to whether the SQE achieves what was intended. However, it is clear that there are real concerns, that will need to be effectively addressed, if it is to achieve its aims.

Weightmans LLP is a leading UK law firm with a nationally recognised professional indemnity practice providing a comprehensive claims, risk management and consultancy service across a broad range of professional disciplines, including major law firms.

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07. THE VALUE OF AN INSURANCE BROKER?

The value of an insurance broker can often be overlooked by law firms and corporates alike when it comes to title insurance matters. When procuring specialist insurance such as Professional Indemnity (PI), Cyber, Employers' Liability and other core commercial insurance products, a broker is almost always used as they can provide specialist advice, ensure competitive quotations from a range of markets, guide your firm through volatile market conditions, and manage claims.

In this article, Anna Beadsmoore, Gallagher's Head of Legal Indemnity, examines the reasons why she believes lawyers should use brokers to procure title insurance and the potential dangers of going direct to insurers.

When law firms approach insurers directly, they often only approach one carrier – typically based on prior relationships. However, this can cause problems as insurers have fundamentally different approaches and capabilities in respect of risk appetites, capacity limits, sector expertise, security rating and, finally, jurisdictional capabilities.

Gallagher recently was asked to assist in a case where a law firm urgently needed assistance when their insurer (that they had transacted with on a direct basis), let them down. A law firm had procured a title policy for their client for a site upon purchase of the land; there were some easement issues and a number of missing transfers within the title. The site was to be developed and lawyers approached one insurer who was able to incept a policy at a reasonable premium, allowing for future development. However, one year later, at the point that the development was due to start, the lenders requested major changes to the insurance policy. Unfortunately, the insurer was not able to agree to the changes due to reinsurance requirements and a low risk appetite for some of the additional covers. This caused significant delays to the project and increased costs, not only in legal fees but in premium costs. A broker would have known that the future redevelopment could cause problems with the insurer as this particular insurer has a notoriously low risk appetite for contingent covers within title policies.

There are many benefits to lawyers to approach a broker when procuring title insurance, namely:

Regulation

The Insurance Conduct of Business Sourcebook (ICOBS) requires that a statement of demands and needs[1] must be communicated to the customer prior to the conclusion of a contract of insurance. It also states that a firm must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgement.

A broker must approach an appropriate insurer for the clients risk and ensure that a recommendation is made upon the product that is to be incepted. By marketing the risk to more than one insurer, the client would be getting a competitive premium.

The Insurance Distribution Directive (IDD)[2] requires an Insurance Product Information Document (IPID)[3] to be included with the insurance policy. It is imperative to ensure that insurers are including these within all policies.

Time saving

The legal landscape is increasingly competitive and law firms will quote fees based on the total project, rather than hourly. Spending hours liaising with multiple insurers would on paper appear not to be practical or a good use of time, as such, a broker will take care of the leg-work of seeing multiple insurers, as well as managing policy issuance and invoice raising.

Financial Security

The financial stability of insurers is constantly[4] changing and most insurance brokers have a dedicated team to ensure that the security ratings of insurers meet with their minimum requirements. They also have a responsibility to notify customers if insurer security changes. If an insurer's rating fall below a certain requirement, advice can be given to clients and options provided. This is particularly important as most title insurance policy periods are in perpetuity.

Reputational Risk

In the unfortunate event that negligence is deemed to have occurred when placing an insurance policy on a direct basis with an insurer, the law firm must call upon their PI insurance in order to pay the insured's claim. If a broker is used, this risk is transferred.

In short, a broker will protect the law firm by transferring reputational and professional indemnity risks and save time by:

- Producing demands and needs statements for the insured
- Liaising with insurers and managing timelines
- Ensuring competition
- Only using financially secure insurers.

1 https://www.handbook.fca.org.uk/handbook/ICOBS/5/2.html
2 https://www.fca.org.uk/firms/insurance-distribution-directive
3 https://www.handbook.fca.org.uk/handbook/glossary/G3483i.html
4 https://www.insurancetimes.co.uk/corporate-insight/time-for-a-change--preparing-for-a-hardening-market/1427984.article

In addition there are significant benefits to the insured – your client:

1. **Coverage & Premium**

   Insurance brokers have leverage with insurers. They place millions of pounds of premium annually and are able to call in favours if needed. They are also more knowledgeable on the types of cover and specific wordings available as they will push for certain amendments to be accepted. At Gallagher, we have marked up policies for certain situations, allowing for comprehensive cover against insurers standard wordings, ensuring less time spent back and forth with amends.

   Approaching more than one insurer enables a comparison against premium. These policy premiums can range from £50 to £5M and even for a simple covenant risk, the premiums offered can differ by thousands of pounds. A broker's leverage also comes into play here.

2. **Claims**

   In the event of a claim, brokers have in house claims teams to manage the claim, not only from a legal process, but ensuring that their corporate leverage is used. There have been instances where Gallagher have secured a claim payment, even though technically the policy had been voided by an insurer.

Gallagher's Legal Indemnity team are experienced with working to tight timescales, delivering complex transactions and developments. Our clients include law firms, property owners and developers. The team understand the complex nature and the significant impact on the future value of a property associated with these risks. Our experience enables us to provide advice and comment on the availability of products, coverage and premium rates to assist your firm quickly and thoroughly without any unnecessary delay.

TO FIND OUT MORE›

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