

# Hooray for hybrid? Don't forget the risks

*Published 22 November 2021*

As we leave lockdown most law firms are developing new ways of working, supported by policies that allow for some element of homeworking. This flexible 'hybrid' model has many advantages for staff. Many can now avoid a long commute, as well as enjoy the financial and health benefits associated with homeworking.

For law firms, this flexible approach to where we work has also increased the recruitment pool and led to a national, rather than local, approach to recruitment.

Despite these benefits, firms need to ask what we are missing by rarely being together in the office. Risk managers will also be focusing on the risks that continued homeworking will create.

## Home v office working

It is crucial that firms plan carefully when considering their flexible-working policies, so that junior colleagues have the opportunity to see and engage with their supervisors regularly in person. The phrase 'learning by osmosis' is often used. Senior lawyers must recognise that less experienced colleagues are missing the opportunity to observe them in meetings with clients or opponents, and sometimes to listen in to telephone conversations.

This will have impacted on the quality and breadth of training and networking. The quality of online training often means that junior lawyers have been able to improve their technical skills. However, professional development will always be about more than this. Some element of human contact is also essential.

Unless strategies are thought through and put in place, eventually the extent and quality of supervision could suffer. If these structures are eroded, it's inevitable that claims will follow.

Managers also need to be able to assess the wellbeing of their team members. This is difficult to achieve remotely. The pandemic and isolation associated with lockdown have been particularly difficult for junior lawyers, who may have missed the opportunities to seek guidance when, inevitably, they feel out of their depth technically or are overstretched. The stress this creates, and the effect on their performance, will be another factor that will contribute to errors, giving rise to claims.

There is also an issue in relation to 'identity' after the long period of remote working. It is hard for new starters to feel a true connection with their firms and colleagues, whom they may never have met. The challenge for firms now will be to embed those new lawyers into their culture, as this is another vital element of risk management.

The predicted increase in claims arising out of remote working is largely yet to manifest itself, although we have seen clear evidence of increased exposure to cyberattack and data breaches. The Solicitors Regulation Authority (SRA) reported a 37% increase in phishing scams during the first two months of the pandemic. Recent ransomware attacks on firms and barristers' chambers also demonstrate that, unless practitioners are alert to this risk, costly and damaging claims are likely to follow.

Conveyancers have also been placed under almost unprecedented pressure with the scramble to complete transactions before the stamp duty concessions come to an end. We expect to see an increase in claims in this area.

Claims against solicitors are often referred to as 'long tail', as they can take years to develop. The impact of homeworking and its effect on employee supervision may not be felt for some time, but we predict that there will be a spike in claims across all practice areas. Risk managers should be reviewing working practices now, as we return to office working, to ensure that they limit potential exposures.

## Regulatory risks

However, the risk to law firms is not limited to claims. We have already seen an increase in regulatory investigations arising directly out of alleged misconduct during lockdown.

The 2019 Standards and Regulations required firms to provide adequate supervision, and the SRA has told the profession that it will interpret this provision broadly to include an obligation to ensure the wellbeing of people.

Research from the Junior Lawyers Division of the Law Society in that same year found that 48% of junior lawyers had reported experiencing mental health problems at some point in the preceding month - formally diagnosed or otherwise. Any of a firm's employees may of course experience such challenges. Of the businesses we have surveyed, 61% said that they had taken steps to address mental health issues. This is encouraging in a profession that has traditionally been unused to focusing on these issues.

Understandably, managers may have missed signs of distress during lockdown. But if wellbeing issues lead to regulatory action against a solicitor then we predict that, in the most serious cases, there may also be questions for the firm to answer.

## Risk management for remote working

Flexibility does not have to come at the cost of effective risk management, however. In order to combat the risk, we suggest the following practical steps and considerations:

- **Engaging with colleagues at all levels.** Regular catchups, buddies for new starters, and mentoring programmes all help.
- **Senior lawyers must be approachable and available.** Barriers to accessibility should be removed where possible, and a culture of openness encouraged. Supervisors should be proactive and involve junior colleagues. Where appropriate, regular file reviews and supervision meetings should be arranged. Performance management inevitably needs to be more 'hands on' when people aren't sharing the same space.
- **Making use of technology.** Amending work in tracked changes with comments, and organising dedicated feedback calls, aid learning and help with motivation. Regular performance-related one-to-ones are critical.
- **Be organised.** Senior lawyers should coordinate with their junior colleagues to maximise the time they spend together in the office.
- **Formal technical training is vital** - but also include sessions focusing on wellbeing and managing stress to help to break the ice. It's far better to discover that a colleague is suffering, so conversations can take place, than to find out afterwards when the claims start to arrive.
- **New starter inductions.** These should focus on training but also serve as an introduction to the firm, its people and culture, and promote a sense of belonging.
- **Monitoring capacity** - for example by using a self-assessed traffic light system circulated to the whole team - can ensure that work is distributed fairly and that those working remotely are not forgotten.
- **Social events** also help to provide the 'glue' that teams need to operate effectively, and in-person events are now starting to be possible.

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