

Presented By:



## In Discussion with A Law Firm Risk Expert (Podcast Transcript and Expanded Commentary)

On making the case for investing in risk management, helping staff develop skills and training, and navigating client guidelines.

**Teddy Peck:** On today's podcast, I'm happy to welcome Max Welsh, a senior risk management consultant with InOutsource. He's going share his views on law firm risk management, including trends, staff training, key areas for investment more broadly, and more.

Max, you bring an interesting perspective to this, given your role today and prior background. Can you start by sharing a bit about yourself?

**Max Welsh:** As a consultant, I specialize in helping firms organize their policies, people and processes to address existing and emerging risk issues. I focus on conflicts, intake, and information governance. Previously, I was deputy general counsel at Foley & Lardner, addressing a range of risk issues, including professional responsibility, and responding to client information security concerns. In that role I oversaw and restructured the administration of firm business intake and conflicts processes.

So I draw on perspectives from several sides of the coin. And a key way I support the firms I work with today is by serving as an effective bridge between operational risk and firm management.

**Teddy:** That's a great way of framing what you do, and an interesting dynamic I'd like to explore further. Can you talk about creating those bridges among risk staff and firm management?

**Max:** A key ingredient is speaking the right language with the right audience, and translating across roles where a bit of interpretation or diplomacy can help each better understand and connect with the other.

Probably one of the biggest areas where that diplomacy can help is in terms of shaping management's perspective about the risk function at the firm.

And that's because it's not uncommon for risk to be perceived as a complete cost center and drain on profits.

Of course, there are leaders who intellectually understand that there is some benefit to the function in terms of loss prevention. But that can be hard to quantify in precise detail — particularly if risk management is being handled well and the firm isn't having urgent issues, encountering problems or paying significant hard costs.

It's definitely ironic. Effective risk teams that have things well under control often struggle to get new investments made — budget, personnel or software — that they know they need to make to improve efficiency and to keep ahead of emerging issues.

**Teddy:** Sounds like a pretty clear “Catch-22.” How do you see firm successfully navigating this dynamic?

**Max:** If your firm has had an incident or issue, that clearly provides strong support for investment. So if a firm has suffered something like disqualification due to a missed conflict, or information governance problem, like client documents that have been misplaced or retained well beyond a disposition deadline — that creates a clear basis for discussion about change. And that urgency is heightened further if the situation results in an insurance claim and that type of external review.

Another approach that can be successful for firms that work across international borders is pushing to organize practices to align globally with the most stringent local policy and regulatory requirements. The truth is the way lawyers are regulated in the US offers firms more risk flexibility and leeway compared to firms in the UK, for example, which has a regulatory body that oversees the legal industry and examines for compliance

And there's a valid efficiency argument to be made in terms of centralizing risk policy, practice and process in a single function, and adopting the toughest rules for the sake of consistency and scale.

A detail teams should never overlook, is that lawyers are lawyers. They have such a focus on strong logic and solid arguments. Operational leaders can appeal to those qualities and speak their language when advocating for prudent investment in risk management.

Again, it can be dangerous to try to “out lawyer” a partner. But appealing to key themes and details makes sense. The reality is that many of these same lawyers often recommend that their own client make serious risk and compliance investments — including their own time. It's a “Sauce for the Goose” argument, as it were.

Finally, there's an economic argument. The fact of the matter is that there's an opportunity cost in terms of lawyer time. Time spent reviewing extensive conflicts reports or navigating other aspects of client evaluation and intake, for example, is time not spent billing, or at least available to spend on billable work.

Investments to improve risk operational efficiency can, in theory, pay significant dividends in terms of billable ROI. Again, that's an argument best tested and validated with your lawyers. It can be best to position that as an argument others have made, and see if it resonates at your firm in particular, rather than jumping to aggressively assert it as fact. Again, there are a few lawyers out there who do enjoy challenging any argument as a matter of course.

**Teddy:** What about the remote working landscape so many firms are dealing with these days? Is that providing opportunities for change and investment?

**Max:** Most definitely. For example, this shift has called into question many existing practices and put a bright spotlight on adopting automation and paper-free, digital processes.

It has also made change possible, even expected. What's interesting is that contrary to traditional wisdom, which says lawyers push back against change, in this environment many have proven open and welcoming to adjusting how they collaborate, operate and serve clients.

So when it comes to risk, it's worth trying to implement an experiment or small-scale change. If it's successful, you can point to those results to support an argument to grow or scale that change.

So, for example, teams can try to adjust how things work within a specific office, or with a specific practice group. They can then secure a mandate to roll out that change more broadly based on lessons learned and successes achieved. And there's nothing like a lawyer seeing that a peer internally is already happy and productive to ease concerns about adjusting processes, practices or tools.

Of course, that dynamic plays out at an organizational level as well. So if you can point to peer firms that have invested in a particular area of risk, say software or staffing levels, that bolsters an internal argument to follow suit.

There's also definitely strength and knowledge in learning from peers. Law firm general counsel do talk, both informally and more formally at round table events. Risk operational leaders and staff connect and communicate as well. Those exchanges often touch not only on making those cases for investment, but also on understanding the broader risk landscape and trends firms face generally.

**Teddy:** Are there good examples of the dynamics you just described that you can share or comment on?

**Max:** Well, the broad rule I'd point to is that firms pay close attention to any area of change in policy, process, or even technology that starts to look like a trend or emerging standard. Firms never want to find themselves in a situation where there was an issue that could be traced back to some risk area, policy or capability that they were arguably behind in adopting or adhering to in some regard.

Firm size also plays a factor. As you might expect, there's a spectrum here as well. While large firms may have more resources, they can sometimes take their time allocating those resources or adopting change.

Of course, on the opposite end, risk leaders at smaller firms may have a harder time selling the idea of change to managers comfortable with the status quo, hesitant to allocate additional resources.

One factor that many have to wrestle with, regardless of the firm size or environment, is just the power of inertia. That's an idea that's really ingrained not just in the culture of many organizations, but also in the fundamental way the law works more broadly as a practice and profession.

**Teddy:** We've talked a bit about why it can be challenging to make the case for investment in risk and strategies to overcome that pushback. Next I'd like to ask you to share your perspective on areas worth investing in.

**Max:** One area that consistently delivers good return on investment is improving data and process management. The specifics often vary by firm, but the basic idea is taking a look at how data is integrated into your conflicts system, the extent to which cleanup might be warranted, and any need opportunities integrate new data sources — either from within the firm or from third-party sources and feeds.

Sometimes the scope of that can depend on the specific policies, practices and preferences of the firm. But there are some compelling cases to be made for investing in areas like anti-money laundering controls and enhancing client due diligence, to pay careful and closer attention to areas like financial health or reputational risk.

The corollary to that on the process side is looking at the functionality offered by your conflicts and intake software, and exploring opportunities to get greater efficiency and clarity. Again, that varies by firm. But it's not uncommon to discover opportunities to adjust process flows or enhance reporting practices that will enable greater team efficiency, better reporting, and faster service for lawyers.

Revisiting our earlier theme, I'd also note that delivering faster response to lawyers, particularly when they acknowledge the improvement, creates greater support for those arguments to invest in other risk areas, including staff organization and training — because you're building on demonstrated success.

**Teddy:** You and I have spoken previously about risk staffing models and skills training. Can you share more?

**Max:** Yes, this is an area that I've been particularly focused on. I regularly work with firms who are looking at ways to further develop their internal conflicts analysts and risk

staff. Traditionally, many employed what might be called an apprenticeship model. Often organizations try to train in-house on one hand, and look to bring out trained talent via lateral recruitment on the other.

But there isn't a certification, or degree, or standard skill-set that defines the ideal conflicts professional. And the shift this year to a remote workforce only further exacerbated and highlighted the challenges of finding, training, developing and retaining skilled risk analysts and staff.

So I've been working with my colleagues on building an innovative learning solution for delivering structured, standardized, scalable risk training, testing and certification. We've made tremendous progress and are working now with some early adopters to validate and grow the solution. It's going really well and I'd encourage any firms interested in learning more to get it touch with me directly.

**Teddy:** I'm having increasing conversations with firms about client guidelines. How do you see these shaping the risk investment equation?

**Max:** OCGs are definitely a major issue and area of focus for firm risk management teams. It's really important to have the information, systems and controls in place that ensure organizations are carefully evaluating those rules.

And there area at least two sides to that equation. The first is making sure the firm has the ability to comply. Examples of that might be firm information governance controls in response to privacy guidelines driven by GDPR, or information security screening access controls driven by the client's own confidentiality concerns.

It's important that the people reviewing these terms have both an accurate and a complete understanding of the firm's capabilities. You don't want the firm signing on to obligations they only have a 99% ability to implement. Or maybe they are 100% technically capable, but will struggle when it comes to demonstrating compliance or responding to a potential client audit.

The flip side of that is in the following of the rules. As OCGs proliferate, firms need to ensure that everyone is operating in line with those requirements. That can start with the creation or review of policies and processes. But we're also seeing firms adopt technological tools to help, and even creating specific roles on the risk team tasked with management of the OCG lifecycle, from review and client negotiation, to implementation, to ongoing tracking.

**Teddy:** You've definitely given us some ideas to chew on in terms of how risk leaders can advocate for investment and change, and risk areas worth renewed attention. To wrap up, I like to ask about anything you'd recommend from your reading or podcast list?

**Max:** My family just moved from Wisconsin to Maine, so I'm immersed in a great book about the White Mountains, in nearby New Hampshire. It's called "Not Without Peril" and shares stories about hikers facing serious danger in that terrain. I guess it's still somewhat risk related. But I'd recommend it to anyone passionate about the outdoors.

**Teddy:** I'll have to give that a look. In the meantime, I'd like to thank you again and wish you the best on the hopefully safer professional trails ahead. ♦



**Teddy Peck** is a national account manager for Accuity, serving North America. He's responsible for bringing on new law firm clients, enabling them to integrate comprehensive data, filtering engines, and reporting tools with their existing intake/conflicts systems — so they can effectively address AML, KYC, EDD and financial crime client screening requirements. **Contact:** [Teddy.Peck@accuity.com](mailto:Teddy.Peck@accuity.com)



**Max Welsh** helps law firms assess and enhance their conflicts, intake, and information governance practices. A veteran with deep in-house experience, including seven years as deputy general counsel at an Am Law 50 firm, he works closely with firms to implement solutions aligned with industry best practices that also accommodate their specific needs. **Contact:** [MWelsh@inoutsource.com](mailto:MWelsh@inoutsource.com)