



Compliance *matters*

JRS Consultants' quarterly digest of risk, compliance and practice management features for law firms

Onwards and upwards...



We must admit to a bit of trepidation when we released the first edition of *Compliance Matters* given the plethora of guidance thrown at law firms.

However, we needn't have worried. The feedback from you has been overwhelmingly positive and thank you for those who took the time to respond. We want it to be stimulating and topical so please [let us know](#) if there is anything that you would like us to feature in future editions.

In this edition we continue to hammer home the risks from Cybercrime. With PII insurers becoming very nervous, a number of law firms are looking into Cyber Liabilities Insurance to cover gaps in insurance. A number of good policies are now emerging onto the market and are worth examining.

Dean Grindle
Editor

Stop press: 2017 contract tender announced

Just as we went to press the LAA announced the process for letting 2017 contracts. Please see [page 4](#) for more details.

Simon honoured

It may be too early for the New Years' Honours List but our very own Simon Pottinger has received an accolade every bit as special to him.



The Criminal Law Solicitors' Association (CLSA) have granted Simon an Honorary Life Membership of the

Association to "acknowledge the immense help and assistance offered by you to practitioners overall over the past twenty years and to the CLSA in particular."

Salaried Partners take note

A recent regulatory settlement agreement published by the SRA raises considerable issues particularly for Salaried Partners. A firm which closed down in 2014 had experienced serious financial difficulties and an SRA investigation identified "a number of financial irregularities".

The salaried Partner left the firm prior to its closure and was referred to the SDT. The SRA stated that the financial difficulties constituted a material risk to the firm and its clients and the Salaried Partner's failure to notify the SRA of the firm's financial difficulties was a breach of the Principles set out in the SRA Handbook.



The message is clear: as a Salaried Partner you may not be privy to the financial information that Equity Partners have access to but you cannot use that as a defence to your role as COLP/COFA in a firm and your duty to report financial problems is paramount.

CQS re-accreditation changes

Criticism of the annual CQS re-accreditation process has been particularly trenchant among our conveyancing law firm clients with a dread descending every year the process comes around. The amount of information required was huge and firms were having to wait months before hearing from the Law Society.



Fortunately, the Society has recognised that the system was flawed and has introduced a [new process](#) similar to the Lexcel system and based on a three-year cycle. Firms will submit a full application in year one. Upon re-accreditation for years two and three, firms will be asked to complete an annual maintenance assessment which will have significantly reduced application forms. In year four, firms will complete the full re-accreditation.

Early feedback from our client firms undergoing re-accreditation was very positive so JRS plaudits to the Law Society.

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Amjid Mahmood

We were shocked to learn of the tragic death on June 11th of Amjid Mahmood, a Director at Amal Solicitors in Huddersfield. Amjid died from a cerebral haemorrhage aged 40.

Amjid was well-known to JRS as a Criminal Solicitor and he will be sorely missed. Committed to legal aid, social justice, charitable work and his community, Amjid was a founding member of the Calderdale Council of Mosques. Our sincere condolences go to his family, friends and colleagues.

The Key to Best Practice

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Cybercrime

Protecting clients from cybercrime

In our last edition we discussed the risk from scammers intercepting email traffic between law firms and clients particularly on conveyancing matters. We focused on the risk to firms arising from a scammer 'spoofing' an email from the client to notify the firm that the client had changed his/her bank account. Many firms have succumbed to this fraud losing considerable sums in the process.

However, the scam can equally work the other way round and is arguably more effective given that clients are less cybercrime savvy than conveyancing practices. A computer hacker can monitor email traffic between solicitor and a homebuyer. They look for anywhere cash transactions are discussed. The fraudster watches for when a bank transfer might be

about to be made - and pounces. They send the homebuyer an email which appears to be from the solicitor's address, typically telling them that the details of the law firm's bank account has changed. The unsuspecting homebuyer sends their cash to the new account, where it is grabbed by the fraudsters. [This tragic story](#) typifies the operation of the fraud.

"Many firms have succumbed to this fraud losing considerable sums in the process"

It is important therefore that you ensure that clients are suitably protected from this scam. Whilst there is no way of guaranteeing such a fraud will not occur there are some steps you can consider. Encryption of emails, whilst not practised widely, would reduce the risk of email hacking.



Alerting the client to these scams in your client care information is also recommended. For example, we think that adding a statement such as this might help put clients on notice:

"Please note, our bank account details will not change during the course of acting for you. If you receive an email or any other communication asking you to pay money into an alternative bank account then please contact us immediately. Prior to transferring funds to our account, we recommend you contact us to verify our account details."

Firms should note that this type of fraud isn't limited to conveyancing. Any matter in which sums of money may be paid to clients could fall victim.

In addition, we urge firms to avoid emailing their bank details to clients or third parties owing to the risk of fraud. Best practice would be to issue them on branded stationery. A warning to clients in your client care information that this is your policy is also recommended.

The Cyber Essentials Scheme

Cyber Essentials is a government-backed, industry-supported scheme to help organisations protect themselves against common cyber attacks.

The Cyber Essentials scheme provides businesses with clarity on good basic cyber security practice.

The Cyber Essentials scheme has been developed by Government and industry to fulfil two functions. It provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common Internet-based threats, within the context of the Government's '10 Step to Cyber Security'. Through the Assurance Framework it offers a mechanism

for law firms to demonstrate to clients, insurers and others that they have taken these essential precautions.

Interestingly, Cyber Essentials is mandatory for central government contracts advertised after 1 October 2014 which involve handling personal information and providing certain ICT products and services. It would not take a huge leap of the imagination to predict that future legal aid tenders may require Cyber Essentials as a pre-requisite. Moreover, with PII insurers increasingly exercised by cyber risks we would not be surprised to see Cyber Essentials mentioned on proposal forms.

For further information go to the [Cyber Essentials website](#). Cyber Essentials sets out five security controls which will help all organisations protect themselves against the most common cyber threats. You might wish to complete the [Self-Assessment](#)

[Questionnaire](#) to give you an idea of how you measure up. You can then decide whether to apply for one of the Cyber Essentials badges (shown).



Cyber Liabilities Insurance

Many law firms believe that cyber liability risks are already covered by the Professional Indemnity Insurance. Whilst PII does afford some coverage of the risks it includes a number of grey areas as well as some areas where there is simply no coverage due to the scope of the insurance agreement, exclusions and definitions. PII is intended to address negligence arising from a law firm's professional services as lawyers and does not specifically contemplate cyber risks.

We are seeing more insurance products emerge onto the market. However, not all cyber insurance products are created equal. Like a legal aid contract, the devil is in the detail. The important thing is to identify the risks not covered by your PII insurance and look for products that plug the most significant gaps. We intend returning to this issue in more detail in the future.

Lexcel begins to usurp Specialist Quality Mark

We have seen a clear trend among legal aid firms migrating to Lexcel from the Specialist Quality Mark (SQM). As a result of this we are conducting large numbers of conversions to the Lexcel standard.



We have never regarded the SQM as a particularly effective standard especially when compared to Lexcel in its latest Version 6 guise. Lexcel, for example, is now more closely aligned to the SRA Code of Conduct requirements and, by implementing Lexcel, firms can demonstrate that they meet the vast majority of Code requirements. Similarly, if you are a Conveyancing practice, Lexcel passports you through the Conveyancing Quality Scheme (CQS) Core Management Standards.

It is in the sphere of risk and practice management that Lexcel demonstrates its huge superiority over SQM. We have seen quite dramatic improvements in the managerial effectiveness of our client law firms who have migrated over to Lexcel.

In order to manage demand for our Lexcel services, we now have three accredited Lexcel Consultants in JRS Consultants: Andy Bean, Dean Grindle and Steve Barnes.

Lexcel and the SRA Risk Outlook

We must admit that when we first heard of the SRA's [Risk Outlook 2015/16](#) document we gave it quite a wide berth, as we are sure many of our clients will have. However, unearthing the document more recently and studying it in greater detail led us to appreciate its merits a little more.

The concept behind the Risk Outlook is to discuss the priority risks that the SRA has identified in the current legal market. We accept the risks to the market do not equate precisely to the risks faced by individual practitioners but they are a close match. Moreover, the SRA's assessment of risk has a solid evidential base and can be a useful tool when preparing Lexcel Risk Management Policies.

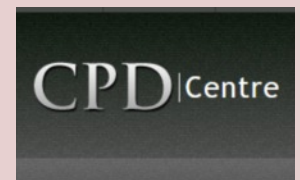


In fact we are now building these priority risks into the Lexcel Risk Register documents that we prepare for client firms in order to highlight these key areas of risk, the potential impact on the firms and the steps taken to mitigate any risks.

Mandatory Lexcel SRO training withdrawn

Please note that the mandatory Law Society re-accreditation training for Lexcel version 6 has been withdrawn. This means that the Lexcel Senior Responsible Officer (SRO) is no longer required to complete the training within six months from the date on which they received confirmation of re-accreditation.

Those of you that have already completed the training will be entitled to a refund. The Law Society will contact you to set out the process for obtaining a refund. For further information, see the [Lexcel pages](#) on the Law Society website .



Lexcel: Panacea or problem?

We do come across a number of firms who, by virtue of doing their own thing or using less-than-expert consultants, have been left with Lexcel systems that, although meeting the standard, do not really work for them.

“it all hinges on how you interpret the standard and how you design your systems”

This is unfortunate as it creates merely a bureaucracy where tasks are performed for the sake of it. Moreover it brings Lexcel into disrepute as staff associate the problems directly with Lexcel.

There is absolutely nothing wrong with the Lexcel standard; it all hinges on how you interpret the standard and how you design your systems. You can choose to take the taxi-driver's route to accreditation or you can make it simple and effective. We are often called in by firms wishing to overhaul their Lexcel systems and migrate to a JRS-based platform. As a result of this we have developed our 'Lexcel Health Check' package. Lexcel should be delivering real results. If it isn't then call us now.

Are your Lexcel systems delivering?



Lexcel Health Check package

Full appraisal of your Lexcel systems and procedures, of any unnecessary, duplicated, overly-bureaucratic procedures;
Focus, more effective solutions;
development of a new Manual and associated policies;
to provide an integrated, efficient and effective initial training needs within the organisation for all firm's designated COLP and COFA.

For further information please contact one of our Consultants on the following numbers:
Simon Peatmer 0970 494800
Andy Bean 0970 290336
Steve Barnes 07725 206667
Dean Grindle 0208 764746

Lexcel
Law Society



CCMS: Don't fall foul of the '84-day Rule'

Our Costs Drafting Team have requested that we highlight a particularly frustrating 'feature' of the Legal Aid Agency's CCMS system. As users of the system will know, you can prepare a bill as a draft claim but not submit it. What users might not realise is that the system only holds the drafts for up to 84 days after which your painstakingly-crafted bill will disappear into the ether followed by swearing and gnashing of teeth.

Please note that the time-limit is calculated from the date the bill was last amended, not the date it was originally created.

Contempt Proceedings



The Ministry of Justice (MoJ) plans to undertake a policy consultation regarding the remuneration of solicitors and

barristers who represent individuals facing an application for committal to prison stemming from civil contempt proceedings*. They are currently seeking feedback from both criminal and civil practitioners via a [pre-consultation questionnaire/online survey](#) which will then help to shape and influence

2017 Crime Tender Opens

It's time for another journey into the e-Portal

The LAA has just opened the tender for the 2017 criminal legal aid contracts. Information is available from the [LAA website](#). The [Law Society website](#) provides additional guidance. **The deadline is 12 noon on 15 September 2016.**

As with any legal aid tender, there are risks involved and we are offering a number of levels of support depending on what firms require. Please contact us **as soon as possible** as demand often outstrips our resources.

The LAA has also published the [2017 Contract](#). Whilst modelled on the enduring 2010 Contract, there are some notable (and controversial) new requirements. We shall say no more so as not to cause any embarrassment to the LAA.

the consultation. It would therefore be advantageous for those involved in this type of work to respond. The MoJ is interested in the full range of committal cases that can arise from civil contempt. This includes cases stemming from:

- All family-type proceedings
- Breaches of domestic violence and female genital mutilation orders
- All other civil-type proceedings, such as commercial, planning and business disputes.

The MoJ is not concerned about contempt committed in the face of the Court.

Beware the logo inspectors

News emerges from the [LAA Website](#) of the LAA's focus on the use of defunct logos. The LAA helpfully remind us that since the 30th June 2013, the CLS and CDS logos (below) should not be used.



We are not sure if this presages Contract Managers asking to see your letterhead or checking your websites for logo infringements. Neither have we been notified of any firms receiving Contract Notices for this but that doesn't mean it hasn't happened.

Given that we have come across a not insignificant number of firms still using these logos we recommend that you delete them at the earliest opportunity.

Digressing slightly, the above got us at JRS reminiscing about the wonderful old legal aid picnic table logo. Ditched unceremoniously in 1999 with the Access to Justice Act, it made a brief reappearance on the [LSC website](#) in 2009 for the 60th Anniversary of legal aid. Since then, however, nothing.

Clients ask us if there is any logo they can use for legal aid. There isn't one; the only reference you can make is 'Contracted with the Legal Aid Agency'. We think legal aid should have a clear brand image. Bring back the picnic table.

A Touch of CLAS

The Law Society consult on Criminal Litigation Accreditation Scheme

The Law Society is currently reviewing the Criminal Litigation Accreditation Scheme (CLAS) with a view to re-launching the scheme in early 2017. Criminal practitioners were contacted by the TLS in April 2016 to notify them of their intention to undertake some research by way of an online survey that began on the 25th April.

TLS stated that it is their aim to maintain a reliable community of active duty solicitors and

to ensure CLAS is adding value for any accredited members in their day to day work.

TLS wish to develop a scheme and ensure that it is being delivered in the most cost-effective and practical manner for its members. As part of the consultation they have invited practitioner's views on changes to the current process of joining and continuing to participate in the scheme so that they can take into account the knowledge, skills and abilities of active duty solicitors. By taking part in the consultation it will help TLS identify how they can do this and what improvements it needs to make.

