



Compliance *matters*

The quarterly digest of risk, compliance and practice management features for law firms



Another challenging year ahead

The Trump/Brexit shocks certainly made 2016 a year to remember. The legal sector suffered its own events that registered on the Richter Scale. Is there any hope for a quieter 2017?

The Duty Provider Contract tender process was by far the biggest event of 2016 although, ultimately, failing to deliver the final Trump-Brexit moment.

We can't quite recall any situation in the history of legal aid resulting in such fear and anxiety among legal aid practitioners. The constant existential threat to many criminal firms allied to the machinations of the complex legal challenges were a constant concern. Occasionally, however, the angst

was leavened by such gems as the '[Mars Bar Scandal](#)' which hilariously emerged from the legal challenge.

Elsewhere, the SRA decided to introduce its new 'Continuing Competence' system for Continuing Professional Development (CPD). We have now helped large numbers of firms set up compliant systems. Whilst abolishing minimum CPD hours may reduce the regulatory burden on Solicitors (and the SRA), we and many clients felt that the 'old' system wasn't necessarily broken and perhaps could have been tweaked rather than discarded *in toto*.

With our recent work in Dubai, it is interesting to note that, while the SRA loosens up CPD regulations over here, competitor economies such as the Emirates, Singapore and others are embracing new, more rigorous CPD systems. One only has to look north of the border to see the Law Society of Scotland operating a 20-hour CPD scheme.

As much as we would like 2017 to be a little less eventful than its predecessor, it hasn't started that way with consultations on the LGFS funding scheme, the prospect of the 8.75% suspended cut to Criminal legal aid fees being re-applied and a civil legal aid tender process announced. Plus ça change!

Dean Grindle
Editor

Consultation on LGFS Reform announced



Ministry
of Justice

We at JRS always reserve a degree of caution when Government agencies use terms such as 'reform'

or 'modernisation' as they are often code for fee cuts or scope reductions.

The MoJ has released a [consultation document](#) on proposals to change the basis on which LGFS payments are calculated and capping payments to court appointees at legal aid rates.

The government has said that it is minded not to reinstate the second (8.75%) fee cut for defence litigators suspended in April 2016 for a period of 12 months. However, this is subject to the outcome of the consultations on proposals for 'LGFS and Court Appointees'.

Crucially the MoJ is seeking to reduce or remove reliance on counting Pages of Prosecution Evidence (PPE). It believes that PPE is no longer seen as the most effective way of assessing how much work a litigator needs to do on individual cases.

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Agreed fees

This edition focuses on the concept of 'agreed fees'. There is a lot of confusion surrounding agreed fees and they are often confused with fixed fees. The differences are discussed on [page 3](#).

Bid round announced

The LAA has announced its 'headline intentions' for 2018 Civil Contracts with tenders scheduled to commence in May 2017. See [page 4](#) for details.

JRS Consultants

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Middlesbrough Road
Middlesbrough



COLP and COFA Training

Webinars and courses available to assist with SRA compliance

A key finding during our visits to law firms is the anxiety that Compliance Officers have about SRA compliance. Often this is a general concern about whether they are doing what they should be doing.

In addition, we find that many legal and support staff lack basic knowledge about their duties under the SRA Handbook.

As a result of this knowledge gap, we have developed a number of training modules focusing on the SRA Handbook. Modules have been designed to reinforce the responsibilities of COLP and COFA postholders and to provide them with the tools of the trade to maintain compliance.

Other modules are geared to raising awareness among fee earners, accounts and support staff.

Training can be delivered by webinar or, if you would like us to deliver training to a wider audience of staff, we are happy to conduct on-site training. Please contact us for more information.



'Continuing Competence' update



The SRA may have ended the concept of minimum CPD hours for Solicitors but, as we highlighted in our previous Compliance Matters, some Solicitors will still be obliged to complete CPD hours, for example:

- LAA contract requirements for Duty Solicitors
- Specialist accreditation panel requirements
- Conveyancing Quality Scheme mandatory CPD

'CPD cycle': reflect, plan, act and evaluate. Unplanned activities still need to be evaluated.

Professionalism CPD should be an activity that maintains or develops professional knowledge or skills.

Legal Executives

Remember that any Legal Executives will still need to meet CILEx requirements. Details are available on the [CILEx website](#). The 2016/17 CPD requirements for Fellows are to undertake a minimum of 9 CPD 'entries', with at least 1 entry in Professionalism. Entries can be from planned or unplanned activities (with a minimum of 5 planned entries for the year). All planned entries should follow the

Licensed Conveyancers

Licensed Conveyancers are regulated by the CLC and, regardless of the SRA changes to CPD, they will need complete sufficient CPD to maintain their status as set out on the [CLC website](#). An Employed Licence Holder, for example, will need to undertake 6 hours CPD per year.

- Specialist Quality Mark requirements

Dubai developments

By Andy Bean

February saw Dean Grindle and I travel to Dubai to assist long-standing client **du** (Emirates Integrated Telecommunications Company) with their forthcoming Lexcel re-assessment.

du became the first Emirates-owned organisation to be awarded the Lexcel quality standard some three years ago.

As our fifth visit to the Emirate, what was fascinating was the extraordinary development of commercial and residential developments. Looking out of the 43rd floor of du's offices (pictured),

what was previously desert is now abuzz with building work.

In the legal sector it was interesting to see that the Government Legal Affairs Department has implemented its [Continuing Legal Professional Development](#) programme since our previous visit.

All Legal Consultants (as they are known) are now required to complete 16 CLPD points each year some of which are stipulated as Mandatory Activities.

As stated on page 1, one could not avoid reflecting on the fact that Dubai are moving to a more rigorous, prescriptive CPD system just as the SRA is ending mandatory CPD under the new 'Continuing Competence' system.



Risk and compliance roundup

Fixed fees are confusing. Agreed?

Fixed fees have been a way of life for as long as I can remember. So you wouldn't think there would be confusion about their operation would you?

Well actually there is, especially when we throw the concept of the 'agreed fee' into the mix. Many solicitors use the terms 'agreed fee' and 'fixed fee' interchangeably. They are **not** the same. Fixed and agreed fees are two distinct types of arrangement and must be treated differently to comply with the [Accounts Rules](#).

The Fixed Fee

Fixed fees are usually set at the beginning of a retainer and are payable on completion of the work required e.g. a Divorce or a Sale Transaction. Where you require costs on account of this fixed fee, the costs must be paid into the **client account** in the usual manner.

These monies have the usual protections for clients as they remain within the client account. At the conclusion of the matter, a final bill is delivered to the client in the usual way and the monies then transferred to the office account in accordance with SAR Rules 17.2 and 17.3. Fixed fees can be varied upwards and can equally be reduced such as if a client aborts a transaction part-way through.

The Agreed Fee

An agreed fee is a fee, the terms of which must be evidenced in writing and must be



paid into the **office account**. The fee cannot be varied upwards and is payable, by the client, **whether or not the work is completed**. The money does not have the usual protections afforded to clients as it is office money, belonging to the firm. Clients signing up to an agreed fee must be made aware of the implications of paying it and consent to this before any payment is made.

What it means in practice

If you want to offer a fixed fee arrangement to a client where the monies will be paid up front and they will be billed for the agreed sum at the end of the retainer then you must pay the monies into client account.

If you wish to pay such monies into office account, then Rule 17.5 of the SAR requires the arrangement to be an Agreed Fee. As long as the client is clear about the arrangement and that you know that you cannot increase the fee in the event of unforeseen complexities or difficulties then an agreed fee is in order. Agreed fees are now more common in Criminal practices where a firm does not maintain a client account. However, agreed fees need to be treated with caution. SAR Rules breaches are a risk. Also, they can cause client dissatisfaction if used inappropriately.



Financial Services Compensation Scheme (FSCS)

Are you compliant?

The FSCS is the UK's statutory compensation scheme for customers of financial services firms. The FSCS can pay compensation to consumers if a company is unable, or likely to be unable, to pay claims against it.

The Law Society [recommends](#) informing clients about the FSCS scheme protections. We suggest adding a paragraph in your T&C to cover the scheme.

Please note that the FSCS limit was increased on the 30th January 2017 from £75,000 to £85,000 so any previous references to the scheme may need to be amended in your T&C or client care letters.

For further details please see the [FSCS website](#).



Cybercrime update: email is a key threat

Following previous Compliance Matters we develop the risks arising from the communication of bank account details via email

Somewhat disappointingly, we still see evidence of many big conveyancing practices (frankly who should know better) persisting in sending their bank details by email. Unless you use encrypted email facilities (and there are downsides to that, too), emails are the bread and butter of the scammers.

We would therefore, once again, reinforce the message to be very careful with emails especially to clients. Many firms have now banned the communication of bank details to clients by email.

A school of thought did emerge among practitioners that it was safer to attach

bank details as PDF documents as opposed to a Word document or within the body of the email. Sadly, this is not the case. A half-decent hacker could crack a PDF in no time at all. There are far too many examples of this so please play safe.

A further safeguard that many conveyancing firms are taking is to add a brief cybercrime warning to the firm's email 'signatures' informing clients that the firm will not be changing its bank details and alerting them to the risks of responding to emailed bank details. We can't overemphasise the benefits of doing this.

2018 Civil Contracts plans announced



The LAA has recently announced its 'headline intentions' for the tendering of 2018 Civil Contracts. The LAA anticipates the procurement process is likely to start as early as **May 2017** with services commencing on 1 April 2018.

Tender Process

As usual the LAA intends to run a two-stage process but curiously has decided to change the terminology for the first stage to the Selection Questionnaire ('SQ stage'). Tender aficionados will recall that this was previously known as the pre qualification questionnaire (PQQ). One word: why?

Quality Standards

The LAA will continue to require that all providers hold either Lexcel or the Specialist Quality Mark which is valid at the contract start date.

Firms will need to prepare soon to ensure that they are audit-ready. Obviously, any firms wishing to develop civil legal aid as a new area of work will have more to do. We can assist with that task.

Please note that Recognising Excellence Ltd have been appointed as SQM administrator from 1 April 2017 and will undertake all SQM audits from that date. To book an audit please contact sqm@recognisingexcellence.co.uk.

The LAA say that they intend to amend their definition of 'employ' in relation to supervisors and authorised litigators to be clearer than in previous civil contracts to exclude self-employment and consultancy-style arrangements. Mental Health practitioners should note the LAA intention to change the supervisor standards.

What next?

We will contact JRS retained clients in due course in order to set out our options for assistance. Anyone wishing to request assistance should contact us as soon as possible.

An Inspector calls

By Steve Barnes

The LAA are constantly out and about, auditing firms against contract requirements. They will use all of the data that you submit to them in order to identify any risk areas, which includes the constant monitoring of their KPIs (Key Performance Indicators), DSCC call acceptance, rejected and refused applications (for legal aid or representation orders). The use of electronic forms makes this even easier for them to monitor.

CRM6/CRMF submission data is filtered and analysed very easily to show potential duplicate or split claims, high disbursements or unusual claim codes and patterns. This is what the LAA use

to generate the file lists supplied prior to each visit. At JRS we are very attuned to the audit trails which they use to try and recoup funds and can undertake a very similar exercise for you, using the same submission data, to highlight potential risk files (and pre-empt an LAA strike).



Office affairs

By Steve Barnes

Just a quick reminder of **some** the key requirements under the new 2017 Crime Contract relating to office premises.



An office must:

"satisfy any professional requirements of your regulator and be registered as appropriate"

"provide you with a constant right of access at any point during Business Hours;"

"be open and accessible to Clients, prospective Clients and other interested parties during normal Business Hours on each Business Day and be permanently staffed by a representative of your organisation (who need not be directly employed by you) for the purpose of arranging appointments and other meetings and where appropriate arranging advice in emergency cases"

"be able to arrange Client appointments during Business Hours (subject to personnel availability)"

"contain suitable facilities to interview Clients, witnesses and any other persons in a private interview room"

Shared and serviced Offices must:

"have a right of access to the Office at all times during Business Hours for the purpose of providing face-to-face legal services at that Office. Any breach of this Paragraph is a Fundamental Breach and we may serve a notice on you terminating your Contract;"

Contacting your Office(s)

"During Business Hours Clients or prospective Clients who telephone must be able to arrange appointments and other meetings and where appropriate arranging advice in emergency cases."

"During non-Business Hours Clients or prospective Clients who telephone must be able to access information about opening hours and who to contact in an emergency. This may be by use of a voice mail message system."

Excluded Arrangements

The following **do not** constitute an Office:

"Hotels; vehicles; residential property; virtual offices or any such similar arrangement whereby all communication (written, electronic or by telephone) is referred to another location; serviced premises, shared premises or similar where you do not have exclusive use of a designated space meeting the requirements above; or serviced premises, shared premises or similar which are not staffed by a representative of your organisation (whether employed by you or not) who is able to arrange appointments and other meetings and where appropriate arranging advice in emergency cases."