



# Compliance matters

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

## Sleep problems



Our hopes for a quieter year on the regulatory front have been well and truly dashed with a plethora of changes slated for 2019. It seems safe to predict that sleep problems for COLPs will continue to rise throughout the year.

The introduction of Lexcel 6.1 took a huge amount of our time but we managed to upgrade virtually all our retained clients by the early part of 2019.

In February, the Law Society announced major changes to the **Conveyancing Quality Scheme** with a set of new Core Practice Management Standards. With an implementation date of 1<sup>st</sup> May 2019, we had to swing quickly into action to identify the changes required and how we would address these in our systems. That was followed by visits to all our CQS clients to discuss the changes, agree how they would respond and document the changes in their Manuals. It has taken a great deal of time. See Page 2 for our feature on these changes.

## SRA gets tough on anti-money laundering

The SRA has made no secret of its focus on anti-money laundering practices within the regulated sector. Its website is bursting with reviews, guidance and warning notices. One could be cynical and say that this is one regulator virtue-signalling to the next regulator in the food chain but that doesn't take us very far.

The reality is that the SRA has an expectation that firms need to do more to combat money laundering and it would be foolish to ignore it.

JRS retained clients benefit from the comprehensive policies and procedures in our

The SRA continues to sabre-rattle in the sphere of **anti-money laundering**. It has recently completed a **review** of law firms and reported that many were falling short in terms of compliance. It has extended its trawl to encompass a larger number of firms and, should it follow previous patterns, will surely be followed by a number of firms being subject to disciplinary processes *pour discourager les autres*.

One aspect that we have become increasingly engaged in, and have developed considerable expertise in, is the subject of **cybercrime prevention**. Worrying numbers of law firms and their clients are being scammed out of large sums of money. It is vital therefore that firms take a number of practical steps to protect both them and their clients. See our feature on page 3 for more details.

Clients defrauded out of money are frequently taking their complaints to the **Legal Ombudsman**. The danger for firms is that the Ombudsman can order you to reimburse your client's losses. I hate to add another reason for your COLP not to be sleeping at night but this is a real risk given our anecdotal experience of the Ombudsman.

**Dean Grindle**  
Editor



Lexcel systems. We also help our clients to prepare robust firm-wide AML risks assessments. The SRA has published more guidance on what it expects from these as this appears to be the main 'pinch-point' for law firms unlucky enough to be audited by the SRA.

We intend to spend the next month or so further refining our risk assessment templates so that they continue to embrace best practice.



## Inside

- ▶ **Anti-Money Laundering**
- ▶ **CQS changes**
- ▶ **Cybercrime update**
- ▶ **Transparency Rules**
- ▶ **Accounts Rules 2019**

## 2019 LALY Awards

The **Gazette** recently published the list of finalists for the 2019 Legal Aid Lawyer of the Year Awards.

Organised by the Legal Aid Practitioners' Group, this year is no exception in terms of the strength of the candidates.

**LEGAL AID  
LAWYER  
OF THE YEAR AWARDS**

The last decade has witnessed some of the most egregious cuts to legal aid in its history. Amid the doom and gloom it is so uplifting to see the positive work being done by these candidates and the unsung others working in the field of legal aid.

## JRS Consultants

Cargo Fleet Offices  
Middlesbrough Road  
Middlesbrough  
TS6 6XH

**Lexcel**  
Legal Practice Quality Mark  
Law Society **Consultant**

# Conveyancing Quality Scheme 2019

## All change for CQS

### Law Society re-launches the CQS standard. Law firms need to get ready.

Earlier in 2019 the Law Society announced major changes to the CQS standard resulting in its re-launch on the 1<sup>st</sup> May 2019. The changes are not only to introduce more rigorous requirements but importantly signal a new, more robust, assessment regime.

Critics, including us at JRS Consultants, have long felt that the CQS had some basic design

flaws and we are pleased that the Law Society has acknowledged this.

A key change has been to the **Core Practice Management Standards (CPMS)** which we outline in the section below.

The Law Society will also be introducing a small number of on-site visits each year and increasing the number of desk-based assessments to ensure firms are equipped and able to achieve the values of CQS. The Law Society will appoint an independent assessment body to carry out the on-site visits.

Although the likelihood of receiving an on-site visit will not be high for most firms, you should plan on the basis that it is now more likely than before and ensure that you meet all the requirements.

We are currently part-way through visiting all our CQS-accredited retained clients to discuss the new requirements, how they intend to respond and updating their Manuals accordingly.

The changes are very significant, require considerable thought and are much more than a quick 'nip and tuck'.

## CPMS overhaul

### With major changes to the Core Practice Management Standards, Dean Grindle highlights the key impacts

#### What are the CPMS?

The **CPMS** can be regarded as a mini version of Lexcel, setting out the procedures, policies and systems that CQS practices need to have in place from the 1<sup>st</sup> May 2019. The CPMS were hitherto aligned with Lexcel but there are now a number of new practice management requirements unique to the CQS.

The key additional requirements relate to:

- ▶ SDLT
- ▶ Advice on leasehold purchases
- ▶ Cybercrime/information management
- ▶ End of the matter
- ▶ Training policy
- ▶ Risk management

#### SDLT Policy

A key requirement is that you must have a policy in relation to Stamp Duty Land Tax (SDLT). This needs to set out how you audit trail the SDLT calculation and advice. The Policy should also address how you make checks between the consideration stated in the sale contract, transfer deed and SDLT Return.

We have found that many firms use the HMRC Calculator which, in itself, is fine but you need to print the calculation out for compliance. Several firms have also developed SDLT declaration forms so that clients are required to sign to confirm the accuracy of the information provided for the purposes of calculating SDLT liability.

#### Advice on Leasehold Purchases

With the public focus on 'toxic leaseholds', it is vital that firms have a leasehold policy which ensures that clients are given advice on:

- ▶ length of the term remaining
- ▶ amount of ground rent and service charge
- ▶ the review provisions and method of calculation

Many firms have tightened up their procedures and have developed templates to ensure that the above is incorporated into written reports.

#### Cybercrime/Information Management

Firms need a procedure for the secure transmission of the practice's bank information to clients and receipt of banking information from clients. They also require a procedure for verifying the banking details of other conveyancers and third parties to whom money is sent. Finally the firm needs to set out procedures for communications with the practice's bankers.

#### End of the matter

Firms now require a procedure to ensure that, at the end of the matter, the client's attention is drawn to the HMLR [Property Alert Service](#) and other fraud guidance published by HMLR. Very

few firms have been doing this so we have developed a form of words to drop into closing letters.

#### Training Policy

Firms must have a training policy which ensures that relevant members of staff are aware of the Core Practice Management Standards and the ways in which the practice complies. The Policy must also ensure that staff understand and follow the National Conveyancing Protocol, where possible.

Firms have to ensure that relevant CQS training is completed on time and also document how staff stay up-to-date in residential conveyancing, client care and risk management.

#### Risk Management

The CPMS requires firms to maintain lists of different conveyancing types of work that the practice will and will not undertake. Often firms have not given sufficient thought to what work they would conduct or turn away. Some aspects requiring particular discussion include:

- ▶ Equity release work
- ▶ Acting for both parties
- ▶ Transactions in excess of the PII limit

#### What next?

As we stated earlier, retained clients will receive a visit where we take you through the CPMS changes and make the updates to your Quality Procedures Manual.

If, you would like to discuss the CPMS then please contact us.

# Focus on **Cybercrime**

## Cyber Essentials

With insurers, regulators, Lexcel 6.1 and the Legal Ombudsman showing increased concern about cybercrime, now might be the time to obtain certification.

Cyber Essentials is a government-backed, industry-supported scheme to help organisations protect themselves against common cyber attacks. Several JRS client firms have now secured Cyber Essentials and the feedback has

been encouraging. The basic Cyber Essentials scheme will suffice for Lexcel 6.1 and the cost is £300 plus VAT.

The process is very straightforward and operates as follows:

- ▶ Select a Certification Body
- ▶ Verify that your IT is suitably secure and meets the standards set by Cyber Essentials - your Certification Body can help with this.

▶ Complete the questionnaire - your Certification Body will provide this and verify your answers.

▶ Once you've passed, you will be awarded your Cyber Essentials certificate.

There is a vast range of Certification Bodies available.

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.

## "Cyber-complaints"

### The powers of the Legal Ombudsman represent a real risk to firms

With cybercrime scams increasing in frequency and sophistication, more and more law firms and clients are losing money to fraudsters. Often, clients subject to such scams, largely in conveyancing transactions, are responding by raising formal complaints with the law firms. Ultimately, these can end up with the Legal Ombudsman (LeO).

us an excellent insight into how they approach these types of complaints.

LeO does not limit itself to the narrow issue of causation when determining cybercrime complaints. LeO will conduct an exhaustive review of your procedures, policies, systems, cyber security arrangements, training, how you responded etc. We cannot over-stress the impact this has on firms and you may be required to spend money on IT specialists to help defend yourself. As a minimum it will consume a huge proportion of your time.

Our experience with LeO is that they are not simply looking for you to have 'adequate' practice in your cybercrime prevention systems. Their expectation is that your systems will be 'best' practice. They expect you to have implemented guidance published by regulatory bodies such as the SRA and Law Society.

### Further guidance

The LeO publication [Our Approach to Dealing With Cybercrime](#) is a must-read especially if you are responsible for conveyancing work. It sets out the measures that LeO expects you to have taken to protect your firm and your clients. Importantly, it provides guidance on how it will treat cybercrime-related complaints.

In a recent determination where the LeO found against a law firm, it cited [cyber security guidance](#) contained in the (less than well-read!) SRA Risk Outlook document 2018/19. As a result we urge all compliance officers to read this.

In addition, LeO will expect you to have taken account of the Law Society's [cybersecurity practice notes, guidance and advice](#). These have been written by experts in the field and serve to help reduce law firms' vulnerabilities to cyber attacks.

## Cyber Security Top Tips

- ▶ Keep your browsers, servers, operating systems, anti-virus software, malware protection and firewalls up to date;
- ▶ Install anti virus software on all devices;
- ▶ Backup important information frequently;
- ▶ Ensure mobile devices are encrypted and require a password when switched on;
- ▶ Ensure laptops are encrypted;
- ▶ Ensure staff use a suitably complex PIN or password;
- ▶ Ensure your staff are trained to recognise scams and unsolicited emails and create a security-focused culture;
- ▶ Mitigate the risk of using removable media, such as ending or restricting the use of USB sticks;
- ▶ Avoid web-based email solutions such as Yahoo, AOL or Hotmail;
- ▶ Restrict the use of personal email accounts on legal work;
- ▶ Ensure clients know how you will work with them during the retainer and they know what to expect, especially concerning money;
- ▶ Warn clients about the risk of cybercrime both at the outset and at appropriate times throughout the retainer e.g. by warnings on email signatures;
- ▶ Avoid sending bank details by email;
- ▶ Never accept bank details from other parties by email without further verification;
- ▶ Check that there are no documents that are emailed containing your bank details. Completion Statements are a classic example.



### Sweeping powers

We are all aware that the LeO, when determining a complaint, can order a firm to pay compensation to the complainant. What few realise is that LeO has the power to order firms to pay compensation for loss suffered up to a limit of £50,000. We have recently seen several firms hit by this.

### The Legal Ombudsman

Some of our clients' recent cybercrime complaint experiences with the LeO have been very troubling. We have recently assisted a client in challenging a LeO determination which ordered them to reimburse the client £50,000. It has given

## Transparency Rules



### With a number of law firms remaining non-compliant with the Rules, we set out some of the pitfalls

In Compliance Matters Issue 7, we set out in some detail what law firms needed to do to meet the SRA Transparency Rules.

Overall, we have not been persuaded about the merits of this latest SRA initiative. Firstly, we were not convinced that it helps the consumer and it even has the potential to confuse them. Secondly, the way it was imposed on firms and the timescales involved were not helpful particularly when firms are coping with many other regulatory pressures. Finally, this intervention seemed at odds with the SRA's previously stated aim of tackling red tape.

But enough of the criticism, what have we learned from the exercise? We have spent a lot of time talking to our clients about what they had and hadn't done. We decided to prepare a number of templates to assist our clients comply which were well-received.

As we look back, most law firms have complied with the essence of the Rules. Some firms decided to take their websites down rather than risk the regulatory backlash. That, however, doesn't wholly absolve you of the Rules and you need to ensure that the same information is available in other formats e.g. paper!

### Digital Badge

From the 25<sup>th</sup> November 2019 all regulated firms must display the new [SRA digital badge](#) on their websites. You can display the badge voluntarily up until that point.

### Complaints

Something which many firms failed to address was the requirement to publish their complaints procedure. The SRA's original transparency guidance document concentrated on prices and was virtually silent on the complaints requirement. It subsequently expanded its guidance to encompass complaints but that was late in the day.

So if you operate a website, you need to publish your complaints procedure. One slight twist to

this is that the SRA Rules require firms to publish "how to report an issue to us and the Legal Ombudsman". Many firms comply with the latter but not the former. We recommend adding something along the following lines to your policy:

### Raising concerns with our regulator

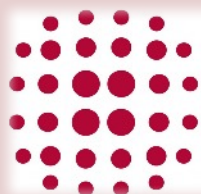
The Solicitors Regulation Authority (SRA) can help you if you are concerned about our behaviour. This could be for things like dishonesty, taking or losing your money or treating you unfairly because of your age, a disability or other characteristic. You can find information about raising your concerns with the SRA at [www.sra.org.uk](http://www.sra.org.uk) in the 'For the public' section.

The other issue we have seen is that some firms have buried their price information so deeply into their website that it is difficult to access. The Rules require the information to be in a 'prominent place'. While that is a subjective test, we urge firms to adhere to the spirit of the Rules to avoid contact with the SRA.

### And next?

The SRA is conducting 'sweeps' of law firm websites for compliance. Do we expect the Rules to be extended? That is one for Mystic Meg, but the SRA seems to be on a mission so one wouldn't rule it out.

## New Accounts Rules



Solicitors  
Regulation  
Authority

### The SRA is replacing the 2011 Rules with a much shorter document. Are you ready?

The SRA have previously announced sweeping amendments to the Accounts Rules which are due to take effect from 25 November 2019.

The regulator has removed many of the prescriptive rules in an attempt to reduce the burden on law firms and allow solicitors greater

freedom to use their professional judgment in considering how they meet the standards.

The overarching objective is to create a simpler set of rules which focus on the principles of keeping client money safe as opposed to having lots of specific technical rules.

### What do I need to do?

Don't ignore them. While the changes are not as earth-shattering as they could have been, they are significant and doing nothing is not an option.

You need to ensure that your COFA and Accounts Team are prepared for the changes. There are a wide variety of training courses and webinars available and we recommend that you sign up without delay if you haven't already.

As with previous SRA initiatives, look beyond the headlines. The SRA may well be slashing the sizes of the Accounts Rules but experience tells us that when the SRA squeezes its rules it has a habit of re-inflating in the guidance material.

Therefore expect guidance notes, toolkits, FAQs etc. of Tolstoyian proportions.

### Key changes

- Rules reduced from 40 pages to 6;
- References to specific time periods removed (e.g. 2 and 14 days) replaced with 'promptly', 'fair' and 'appropriate';
- Client money definition changes;
- LAA (legal aid) funds no longer need to be paid into the client account;
- More flexibility in relation to interest policies;
- Options for use of TPMA (third party managed accounts).

Prior to their introduction, we intend to revise our Quality Procedures Manuals to bring them into line with the new Rules. We will then be visiting our retained clients to effect the changes.